

No. 13559

United States
Court of Appeals
for the Ninth Circuit.

ser. vol. 2774

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

ALASKA STEAMSHIP COMPANY and AMER-
ICAN RADIO ASSOCIATION, C.I.O.,
Appellees.

Transcript of Record

Petition for Enforcement of an Order of the
National Labor Relations Board

FILED

MAY 1953

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United States
Court of Appeals
for the Ninth Circuit.

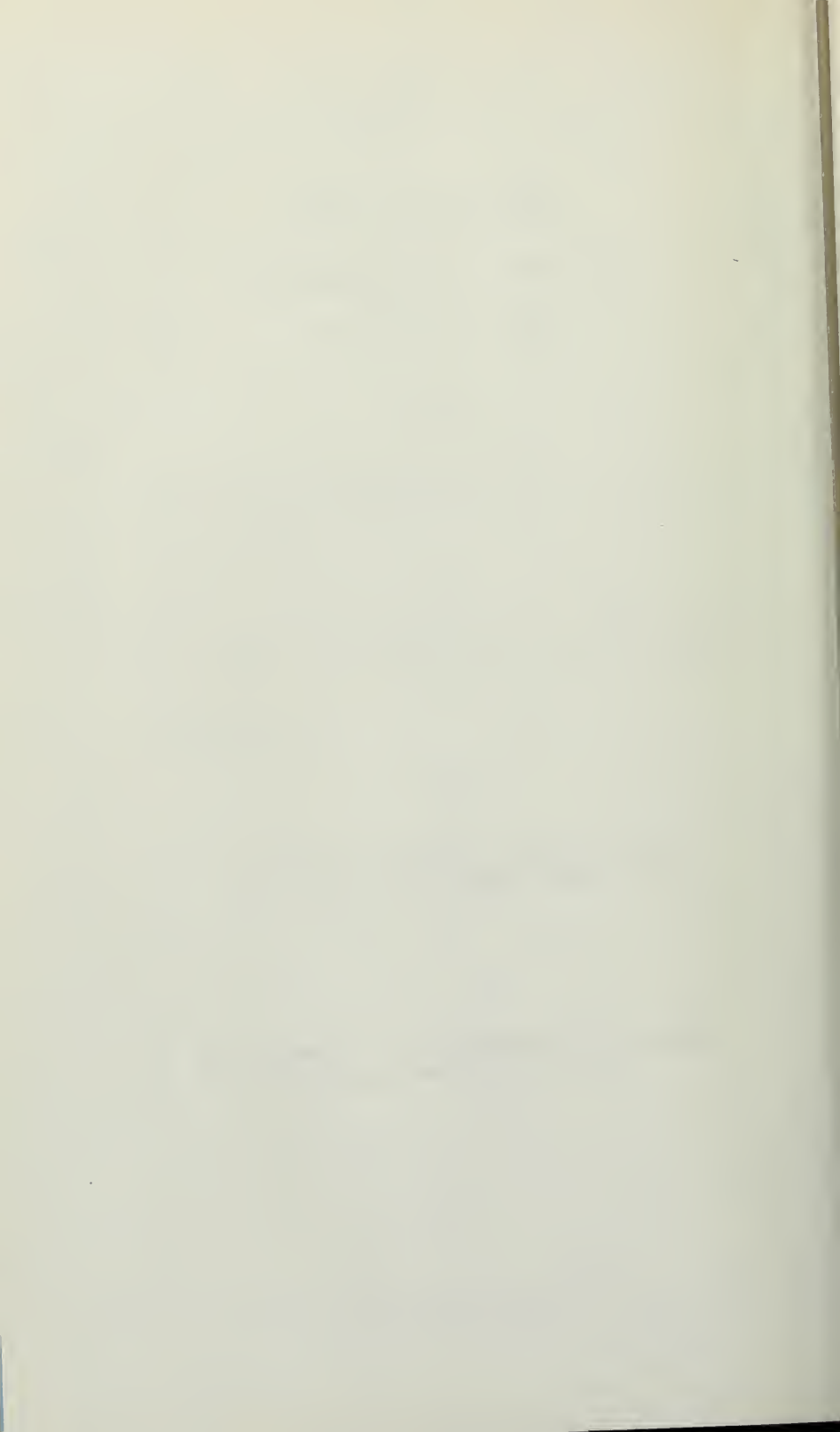
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National Labor Relations Board**



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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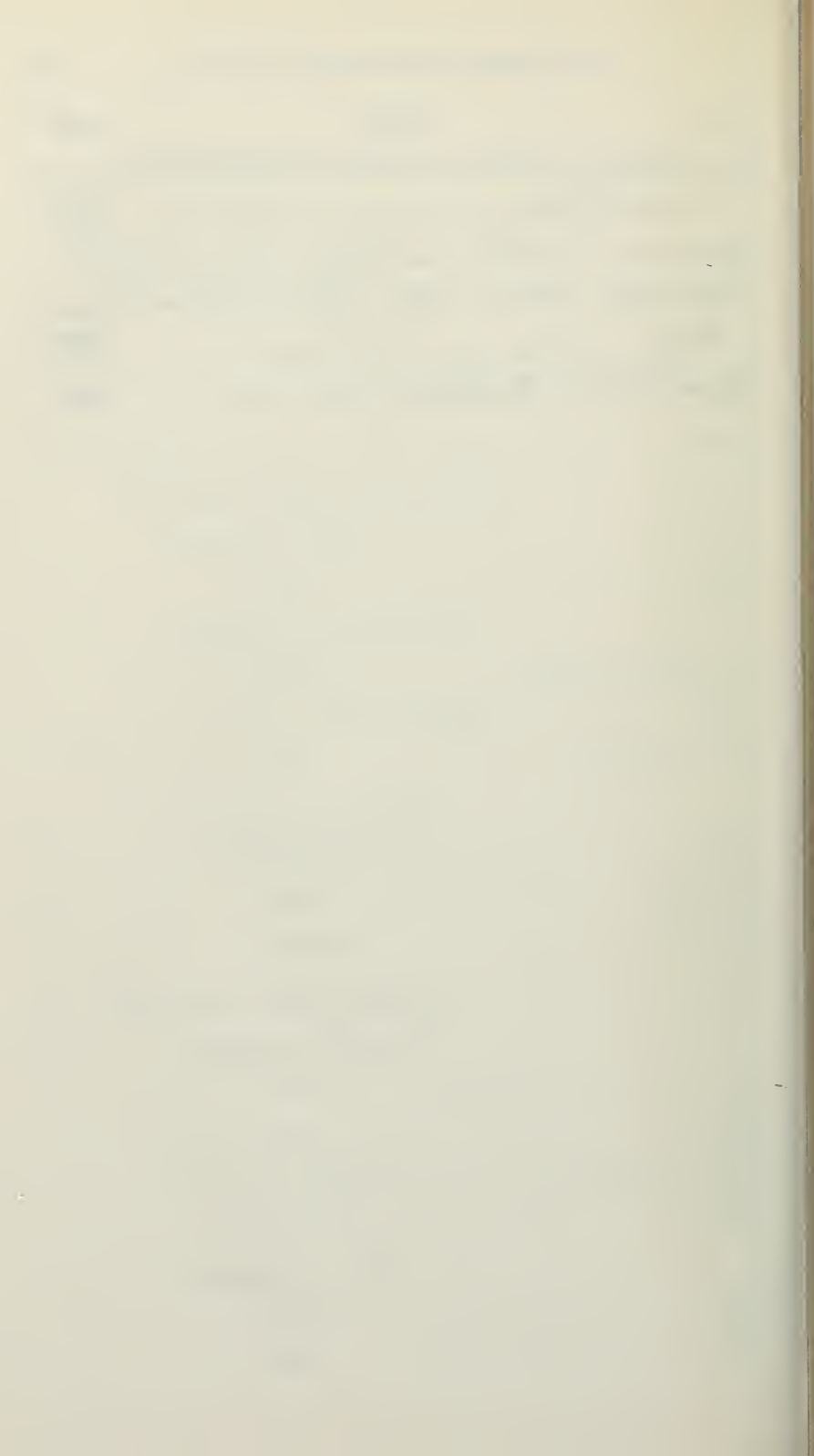
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J. TYLER HULL,

Central Bldg.,

Seattle 4, Wash.

For Respondent, Alaska Steamship Co.

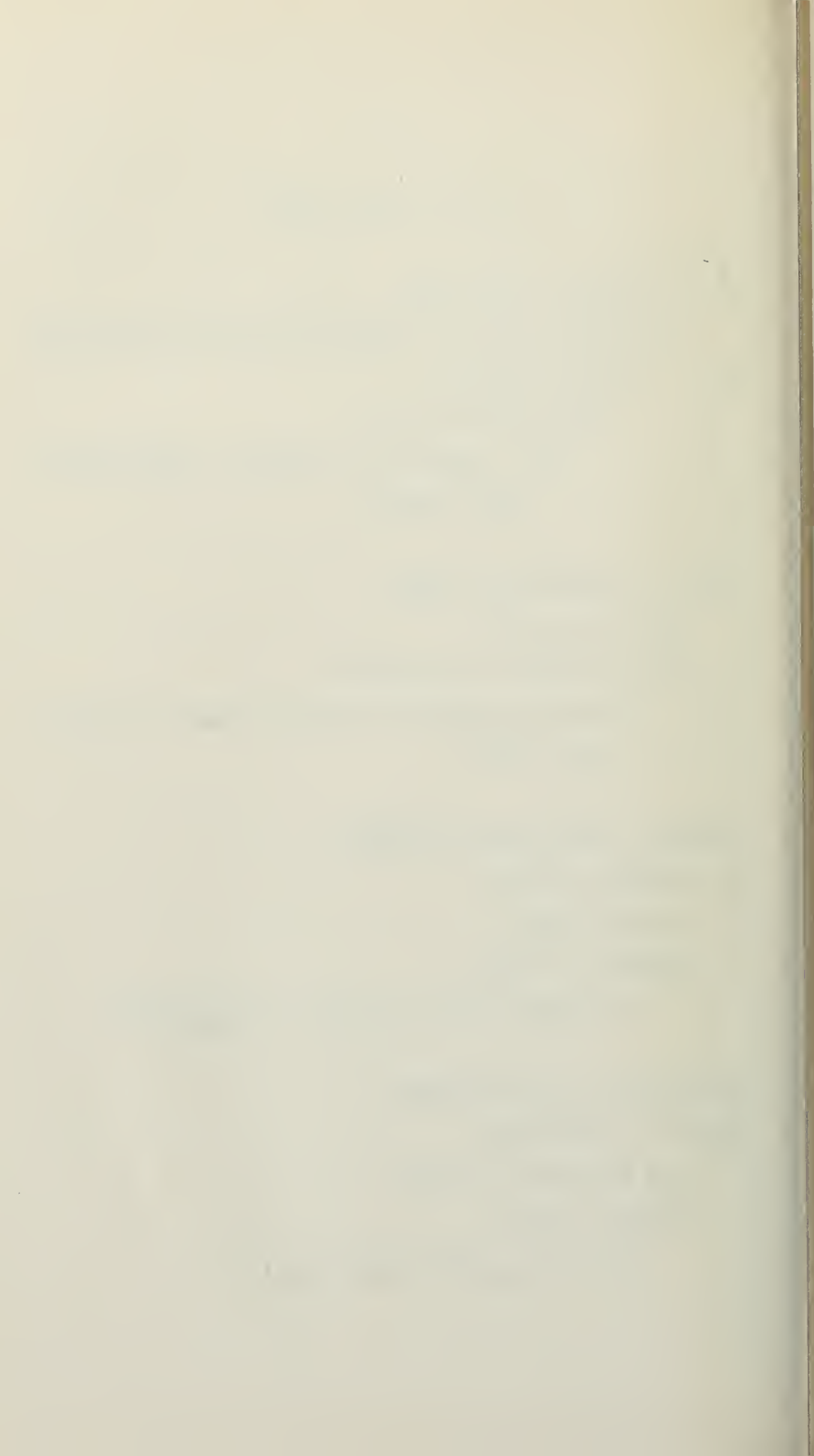
BASSETT & GEISNESS,

JOHN GEISNESS,

811 New World Bldg.,

Seattle, Wash.,

For Horace W. Underwood.



Form NLRB—501.

United States of America—National Labor
Relations Board

AMENDED CHARGE AGAINST EMPLOYER

Case No. 19-CA-277.

Date Filed: 1/17/50. Amended 3/20/50.

Compliance Status Checked by:

Important—Read Carefully

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

1. Employer Against Whom Charge is Brought:

Name of Employer: Alaska Steamship Company.

Address of Establishment: Pier 42 North, Seattle, Washington.

Number of Workers Employed: Approximately 1000.

Nature of Employer's Business: Steamship operation.

The above-named employer has engaged in and

is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (2) and (3) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.):

On various dates since November 21, 1949, the Alaska Steamship Company has refused to employ Horace W. Underwood to encourage membership in American Radio Association, CIO, in violation of Section 8 (a) (3) of the Act;

By executing and giving effect to a contract dated December 3, 1948, between the American Radio Association, CIO, and the Alaska Steamship Company, the Alaska Steamship Company has assisted American Radio Association in violation of Section 8 (a) (2) of the Act;

By the above acts and by other acts and statements, the Alaska Steamship Company has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge: Horace W. Underwood.
4. Address (Street and number, city, zone, and State): Vashon, Washington. Telephone No. Black 1231.

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization).
6. Address of National or International, if any (Street and number, city, zone, and State). Telephone No.
7. Declaration:

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ HORACE W. UNDERWOOD,
Individual.

Date: March 17, 1950.

Wilfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80).

Received March 20, 1950.

Form NLRB-508

United States of America
National Labor Relations Board

Case No. 19-CB-90

AMENDED CHARGE AGAINST LABOR
ORGANIZATION OR ITS AGENTS

Date Filed: 1-17-50.

Amended: 1-22-51.

Compliance Status Checked by:

Important—Read Carefully

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with Section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions: File an Original and 4 Copies of This Charge With the NLRB Regional Director for the Region in Which the Alleged Unfair Labor Practice Occurred or Is Occurring.

1. Labor Organization or Its Agents Against Which Charge Is Brought.

Name: American Radio Association, CIO.

Address: Arcade Building, Seattle, Wash.

The Above-Named Organization(s) or Its Agents Has (Have) Engaged in and Is (Are) Engaging in Unfair Labor Practices Within the Meaning of Section (8b) Subsection(s) (1) (A) and (2) of the National Labor Relations Act, and These Unfair Labor Practices Are Unfair Labor Practices Affecting Commerce Within the Meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.):

Since on or about December 1, 1949, and continuing thereafter down to the date of the exe-

cution of this charge, American Radio Association, CIO, has attempted to cause, and has caused Alaska Steamship Company to discriminate against Horace W. Underwood, in violation of Section 8(a)(3) of the Act, by refusing to employ him as a radio officer aboard any of its vessels, all in violation of Section 8(b)(2) of the Act.

Since on or about December 3, 1948, Alaska Steamship Company, among others, entered into a labor agreement with American Radio Association, CIO, which said agreement accords preference in employment to members of said American Radio Association, CIO, which provisions are illegal and void because they impose conditions upon employment more restrictive than those permissible under Section 8(a)(3) of the Act, and because no election has been held pursuant to the provisions of Section 9(e)(1) of the Act.

Since on or about May 15, 1949, American Radio Association, CIO, has promulgated and administered shipping rules and assignment lists which have been maintained and administered by and for the benefit of members of American Radio Association, CIO, and thereby discriminated against non-members of American Radio Association, CIO, all in violation of Section 8(b)(1)(A) of the Act.

By the above acts and other acts and statements, American Radio Association, CIO, has restrained and coerced employees of Alaska

Steamship Company, in the exercise of the rights guaranteed in Section 7 of the Act.

3. Name of Employer: Alaska Steamship Company.
4. Location of Plant Involved: Pier 42, Seattle, Wash.
5. Nature of Employer's Business: Steamship company.
6. No. of Workers Employed: Variable.
7. Full Name of Party Filing Charge: Horace W. Underwood.
8. Address of Party Filing Charge (Street, City, and State): Vashon, Wash. Tel. No.: Vashon 3235.
9. Declaration:

I Declare That I Have Read the Above Charge and That the Statements Therein Are True to the Best of My Knowledge and Belief.

By /s/ H. W. UNDERWOOD.

(Signature of Representative
or Person Making Charge.)

Date: Jan. 22, 1951.

Wilfully False Statements on This Charge Can Be Punished by Fine and Imprisonment (U. S. Code, Title 18, Section 1001).

Received January 22, 1951.

United States of America, Before the National
Labor Relations Board, Nineteenth Region

Case No. 19-CA-277 and Case No. 19-CA-358

In the Matter of:

ALASKA STEAMSHIP COMPANY

and

HORACE W. UNDERWOOD (an Individual).

Case No. 19-CB-90 and Case No. 19-CB-135

AMERICAN RADIO ASSOCIATION, CIO,

and

HORACE W. UNDERWOOD (an Individual).

CONSOLIDATED COMPLAINT

It having been charged by Horace W. Underwood, an individual, that Alaska Steamship Company and American Radio Association, CIO, have engaged in and are engaging in certain unfair labor practices affecting commerce as set forth in the Labor Management Relations Act of 1947, 61 Stat. 136, herein called the Act, the General Counsel of the National Labor Relations Board, on behalf of said Board, by the Regional Director for the Nineteenth Region, designated by the Board's Rules and Regulations, Series 5, as amended, Section 203.15, hereby issues this Consolidated Complaint and alleges as follows:

I.

Alaska Steamship Company, hereinafter called

Respondent Alaska, is a Washington corporation, having its principal office and place of business in Seattle, Washington, where it is engaged in the operation of ocean-going vessels for the transportation of persons and cargo between ports in the United States and ports in the Territory of Alaska. During the preceding 12-month period it has operated approximately 15 ocean-going cargo or passenger or combination vessels, and has realized, from the transportation of cargo and passengers in interstate commerce, revenue in excess of \$100,000.00.

II.

Respondent Alaska at all times material hereto has been and is now an employer within the meaning of Section 2 of the Act, and has been and is now engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

III.

American Radio Association, CIO, hereinafter called Respondent Radio, at all times material hereto has been and is now a labor organization within the meaning of Section 2, subsection (5) of the Act.

IV.

Respondent Radio at all times material hereto has maintained and does now maintain its principal office and place of business in the City of New York, New York, and has operated and does now operate a branch office for the conduct of its business in the City of Seattle, Washington.

V.

On or about December 3, 1948, Respondent Alaska entered into a labor agreement with Respondent Radio, wherein, among other things, it was provided that:

“Section 1.

“Employers agree to recognize the Association as the authorized collective bargaining agent for all radio officers employed by the employers, and when filling vacancies preference of employment shall be given to members of the Association.

“Section 2.

“The names of all unemployed members of the Association shall be placed on the Association’s unemployed lists at the various offices of the Association. The offices of the Association shall be the central clearing bureaus through which all arrangements in connection with the employment of radio officers shall be made.

“Section 3.

“(b) * * * employers recognize that it has been the practice for [radio officers] to offer themselves for employment through the Association offices, and consequently, * * * the employers agree to secure all radio officers within the classifications covered by this agreement from and through the offices of the Association.”

VI.

On or about July 14, 1950, Respondent Alaska and Respondent Radio entered into an amendment

to said agreement referred to in paragraph V above which, among other things, provides:

“Section 2.

“The employers shall employ and continue in their employment on board their vessels, radio officers procured from the list of unemployed radio officers on file at the nearest employment office of the Association.

“When filling vacancies all radio officers shall produce official assignment clearance from the Association employment office.

“Section 3.

“The employers agree, as a condition of employment, that all employees in the bargaining unit shall become and remain members of the Association 30 days after the effective date of this clause or 30 days after date of hiring, whichever is later.

“The foregoing clause shall become effective when the Association shall have been certified by the National Labor Relations Board as provided by Section 8(A) and (3) of the Amended Act, or when such certification shall no longer be required, whichever is sooner.”

VII.

The preferential employment provisions contained in the agreement as described in paragraph V above, and in the amendment described in paragraph VI above, and any renewals or continuations of either, are illegal and void because they impose conditions upon employment more restrictive than those permissible under Section 8(a)(3) of the

Act and because no certification of a referendum authorizing the entry into of an agreement requiring membership in Respondent Radio as a condition of employment, has ever issued pursuant to the provisions of Section 9(e)(1) of the Act.

VIII.

From January 31 to February 6, 1949, shipping rules for marine radio officers were proposed, promulgated, and adopted by Respondent Radio and became effective on or about May 15, 1949, which, at all times since, have been and now are in full force and effect. Said shipping rules, among other things, provide:

“Rule 1.

“It is the policy of the union that the membership shall be offered employment through the branch offices of the union in accordance with the principle of rotary hiring.

“Rule 3.

“The term ‘member’ or ‘membership’ as used in these rules shall mean a full book member or members in good standing in the American Radio Association.

“Rule 4(a).

“A national assignment list shall be maintained by the union. Such list shall be posted in each branch office of the union.

“Rule 4(c).

“The assignment list shall be considered con-

fidential and shall not be divulged in whole or in part to any non-member of the union.”

IX.

Pursuant to the terms of the agreement described in paragraph V above, and the amendment described in paragraph VI above, and the provision of the shipping rules as described in paragraph VIII above, at all times material hereto, Respondent Radio and its Seattle Branch have maintained and administered assignment lists.

X.

On or about December 1, 1949, Horace W. Underwood, hereinafter called Underwood, did execute and deposit at the Seattle Branch office of Respondent Radio an active assignment list application form.

XI.

On or about April 16, 1950, and December 12, 1950, Underwood did make further application for placement on the active assignment list maintained and administered by Respondent Radio and did request information whether his written application described in paragraph X above had resulted in according him placement on Respondent Radio's shipping lists, or whether if so placed on any shipping lists maintained and administered by Respondent Radio what numerical placement had been accorded his application. In each instance Respondent Radio, pursuant to the provisions of its shipping rules, refused to inform said Underwood in either respect.

XII.

On or about December 23, 1949; December 29, 1949; April 2, 1950, and May 25, 1950, said Underwood requested of Respondent Alaska employment as a radio officer aboard ships operated by Respondent Alaska.

XIII.

At all times since December 23, 1949, and more particularly on or about January 6, 1950; February 2, 15, and 24; March 3, 9, 16, and 17; April 16; May 20; June 25 and 30, 1950, and at other times, which times are peculiarly within the knowledge of Respondent Alaska, Respondent Alaska has manned and sailed its vessels from the Port of Seattle, Washington, employing radio officers among its licensed personnel.

XIV.

At all times since on or about December 1, 1949, Respondent Radio has refused and thereafter has continued to refuse to dispatch Underwood to Respondent Alaska or any other requesting employer to available radio officer positions for which the said Underwood at all times has been and is now fully qualified to discharge.

XV.

As a result of the actions of Respondent Radio as described in paragraph XIV above, Underwood has been denied employment as a radio officer by Respondent Alaska.

XVI.

By entering into the agreement and its amendment as described in paragraphs V and VI, respectively, above; by adopting, promulgating, and administering shipping rules as described in paragraph VIII above; by maintaining and administering assignment lists pursuant to said shipping rules; and by refusing to dispatch Underwood as described in paragraph XIV above, Respondent Radio has caused and is now causing employers, and more particularly respondent Alaska, to discriminate against their employees, and more particularly Underwood, in regard to hire and tenure of employment and to encourage membership in Respondent Radio in violation of Section 8(a)(3) of the Act, and thereby Respondent Radio has engaged in and is now engaging in unfair labor practices within the meaning of Section 8(b)(2) of the Act.

XVII.

By all of the acts of Respondent Radio as set forth and described in paragraphs V, VI, VIII, IX, XIV, XV, and XVI above, and by each of said acts, Respondent Radio has restrained and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, and by all of said acts and by each of them, Respondent Radio has engaged in and is now engaging in unfair labor practices within the meaning of Section 8(b)(1) (A) of the Act.

XVIII.

By entering into the contract and its amendment

as described in paragraphs V and VI, respectively, above; by acquiescing in and assenting to a practice of obtaining radio officers only from Respondent Radio [whereby Respondent Radio], pursuant to its assignment lists which are maintained and administered pursuant to its shipping rules, Respondent Alaska permits Respondent Radio to control the dispatching of radio officers, and in the course of which control Respondent Radio refused to dispatch Underwood as described in paragraph XIV above, Respondent Alaska interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act, and has discriminated and is now discriminating against their employees, and more particularly Underwood, in regard to hire or tenure of employment, and thus encouraged and now is encouraging membership in Respondent Radio, and thereby engaged in and is now engaging in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

XIX.

The activities of Respondent Alaska and Respondent Radio as set forth and described in paragraphs V through XVIII, inclusive, occurring in connection with the operations of Respondent Alaska as described in paragraphs I and II above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states of the United States, and have led to and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, on this 22nd day of January, 1951, issues this Consolidated Complaint against Alaska Steamship Company and American Radio Association, CIO, the Respondents herein.

[Seal] /s/ THOMAS P. GRAHAM, JR.,
Regional Director, National Labor Relations Board,
19th Region.

Before the National Labor Relations Board

[Title of Causes.]

ANSWER OF ALASKA
STEAMSHIP COMPANY

Comes now the respondent Alaska Steamship Company, and for answer to the complaint admits, denies and alleges as follows:

1.

Admits the allegations contained in the first sentence of Paragraph I of the complaint; admits that during the preceding 12-month period this respondent has operated ocean-going cargo or passenger or combination vessels, and has realized, from the transportation of cargo and passengers in interstate commerce, revenue in excess of \$100,000.00; and denies each and every other allegation contained in Paragraph I of the complaint.

2.

Admits the allegations of Paragraphs II and III of the Complaint.

3.

This respondent is without knowledge of the allegations contained in Paragraph IV of the Complaint.

4.

Admits that on or about December 3, 1948, Pacific American Shipowners Association, on behalf of its member companies, including this respondent, entered into a labor agreement with respondent Radio, and that said agreement contained certain sections, including Sections 1, 2 and 3, portions of which sections are correctly quoted in Paragraph V of the Complaint, and denies each and every other allegation contained in said Paragraph V.

5.

Admits that on or about July 14, 1950, and effective April 28, 1950, the Pacific Maritime Association (successor to Pacific American Shipowners Association), on behalf of its member companies, including this respondent, entered into an agreement amending the agreement referred to in Paragraph V of the Complaint, and that said amendment contained certain sections designated Section 2 and Section 3, a portion of which sections is correctly quoted in Paragraph VI of the Complaint, and denies each and every other allegation contained in said Paragraph VI of the Complaint.

6.

Denies each and every allegation contained in Paragraph VII of the Complaint,

7.

This respondent is without knowledge of the allegations contained in Paragraphs VIII through XI, both inclusive, of the Complaint.

8.

Denies each and every allegation contained in Paragraph XII of the Complaint.

9.

Admits that at various times since December 23, 1949, vessels operated by this respondent have sailed from the Port of Seattle, Washington, and that personnel designated as radio officers have been employed aboard said vessels, and denies each and every other allegation contained in Paragraph XIII of the Complaint.

10.

This respondent is without knowledge of the allegations contained in Paragraph XIV of the Complaint.

11.

Denies each and every allegation contained in Paragraphs XV through XIX, both inclusive, of the Complaint.

12.

The Post Office address of this respondent is Pier 42, Seattle 4, Washington, and for the purpose of these proceedings is in care of Edward G.

Dobrin, 603 Central Building, Seattle 4, Washington.

Wherefore, it is prayed that the Complaint herein be dismissed.

ALASKA STEAMSHIP
COMPANY,

By BOGLE, BOGLE & GATES,
EDWARD G. DOBRIN,
J. TYLER HULL,
Its Attorneys.

Duly verified.

Received January 31, 1951.

Before the National Labor Relations Board

[Title of Causes.]

ANSWER OF AMERICAN
RADIO ASSOCIATION

Comes now the American Radio Association, CIO, and for its answer alleges:

I.

Admits the allegations of the Complaint marked III, IV, V, and VI.

II.

Has no knowledge or information to form a belief thereof as to allegations marked I, II, XII,

and XIII, and on that ground denies each and every of the allegations therein contained.

III.

Denies each and every of the allegations contained in paragraphs VII, VIII, IX, X, XI, XIV, XV, XVI, XVII, XVIII and XIX.

Wherefore, the respondent, American Radio Association, CIO, prays that the Complaint be dismissed.

/s/ JAY A. DARWIN,
Attorney for American Radio Association, CIO,
Respondent.

Duly verified.

Received February 2, 1951.

Before the National Labor Relations Board

[Title of Causes.]

ORDER CONSOLIDATING CASES AND NOTICE OF HEARING

Charges and Amended Charges pursuant to Sections 8(a) and 8(b) of the National Labor Relations Act, 61 Stat. 136, having been filed by Horace W. Underwood, an individual, copies of which charges are hereto attached, and the undersigned having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act and to avoid unnecessary costs or delay,

It Is Hereby Ordered, pursuant to Section 203.33 of the National Labor Relations Board Rules and

Regulations, Series 5, as amended, that these cases be and they hereby are consolidated.

Please Take Notice that on the 26th day of February, 1951, at 10:00 a.m., in Room 523, Smith Tower, Seattle, Washington, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Consolidated Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You Are Further Notified that, pursuant to Section 203.20 of the Board's Rules and Regulations, you shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an Answer to the said Complaint within ten (10) days from the service thereof and that unless you do so all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.

In Witness Whereof the General Counsel of the National Labor Relations Board on behalf of the Board, has caused this Consolidated Complaint and Order Consolidating Cases and Notice of Hearing to be signed by the Regional Director for the Nineteenth Region on this 22nd day of January, 1951.

[Seal] /s/ THOMAS P. GRAHAM, JR.,
Regional Director, National Labor Relations Board,
19th Region.

[Admitted in evidence February 27, 1951, as General Counsel's Exhibit No. 1.]

Before the National Labor Relations Board

[Title of Causes.]

INTERMEDIATE REPORT AND
RECOMMENDED ORDER

Statement of the Case

Upon charges duly filed by Horace W. Underwood, herein called the Complainant, the General Counsel of the National Labor Relations Board,¹ by the Regional Director for the Nineteenth Region (Seattle, Washington), issued a consolidated complaint dated January 22, 1951, against Alaska Steamship Company, Seattle, Washington, herein called the Company, and American Radio Association, CIO, Seattle, Washington, herein called the Union, and jointly called the Respondents, alleging that the Respondents had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 8 (b) (1) (A) and (2), respectively, and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Copies of the complaint, accompanied by an order consolidating the cases and notice of hearing, and copies of the respective charges, were duly served upon the Respondents.

¹The General Counsel and the attorney representing him at the hearing are referred to as the General Counsel. The national Labor Relations Board is referred to as the Board.

With respect to the unfair labor practices, the complaint alleged in substance that: (a) on December 3, 1948, the Respondents entered into an agreement, later amended by an agreement of July 14, 1950, each of which provided that the Company would obtain its marine radio officers through the facilities of the Union and also contained preferential employment provision, which were illegal and void because of the failure to satisfy the requirements in the proviso to Section 8 (a) (3) of the Act, both as to the conduct of a union-shop election and the permissible limits of union security provisions; (b) since about May 15, 1949, the Union has had in effect certain shipping rules for radio officers, pursuant to which the Union has maintained and administered assignment lists, restricting to members of the Union referrals to positions with the Company and other employers; (c) notwithstanding application by Horace W. Underwood, a radio officer, to the Union for placement on its assignment lists, and to the Company for employment, the Union refused to dispatch Underwood to the Company or other employers for available positions as a radio officer; and (d) by said acts and conduct, the Union violated Section 8 (b) (1) (A) and (2) and the Company violated Section 8 (a) (1) and (3) of the Act.

On January 31, 1951, the Company filed its answer, admitting certain allegations of the complaint concerning its corporate structure and business activities. The answer admitted also that on December 3, 1948, the Company, through Pacific American

Shipowners Association, and on July 14, 1950, through its successor, Pacific Maritime Association, acting on behalf of their member companies, had entered into labor agreements with the Union, but the answer denied that the Company had engaged in unfair labor practices. On February, 1951, the Union filed its answer, admitting that it was, and had been, under contractual relationships with the Company, but denying that it had engaged in unfair labor practices.

Pursuant to notice, a hearing was held on February 26 and 27, and March 26 to 28, 1951, inclusive, at Seattle, Washington, before the undersigned Trial Examiner duly designated by the Associate Chief Trial Examiner. The General Counsel, both Respondents, and the Complainant were represented by counsel, and all participated in the hearing. Full opportunity to examine and cross-examine witnesses and to introduce evidence pertinent to the issue was afforded all parties. At the opening of the hearing, the General Counsel moved to amend the complaint in a minor respect, and the motion was granted. The Union moved to strike certain allegations of the complaint, which motion was joined in by the Company. It was taken under advisement by me and later denied. The Company moved, and the Union joined therein, to dismiss the allegations of the complaint that the contract of July 14, 1950, was unlawful per se, upon the ground that the alleged unlawful provisions therein had been approved in substance by the Board in another proceeding involving other parties, and this motion

was taken under advisement. The Company also moved, with the Union joining in, that the complaint be dismissed insofar as it alleged that the execution of the agreement of December 3, 1948, had been unlawful, upon the ground that no timely charge had been filed. This motion was granted upon that and an additional ground, as will appear in the discussion of the contracts below. On the second day of the hearing, the General Counsel moved to amend the complaint in several respects, particularly to allege that the Company violated Section 8 (a) (3) by its failure to employ Underwood after his application to the Company for employment, and to allege also that the Company, by its alleged acts and conduct above recited, violated Section 8 (a) (2) of the Act. This motion was granted over the Respondents' objections. Upon motion of the Respondents, the hearing was adjourned until March 26. When the hearing resumed, the Respondents moved that their respective answers be deemed amended to deny the new allegations, and these motions were granted. The Company, with the Union joining therein, renewed its motions above stated to dismiss certain allegations of the complaint, and my rulings were as before. At the close of the hearing, the General Counsel moved to conform the pleadings to the proof as to minor matters, and this motion was granted without objection. Each Respondent moved to dismiss the complaint upon the ground that there had been a failure of proof, and the Company renewed its

motion to dismiss the allegation that the contract of July 14, 1950, was unlawful per se. These motions were taken under advisement, and are disposed of in accordance with the determinations below. The parties did not avail themselves of an opportunity to argue orally, but there was a brief discussion of the issues on the record. Pursuant to leave granted, the Respondents and the Complainant filed briefs.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

Findings of Fact

I. The Business of the Company

Alaska Steamship Company, a Washington corporation with its principal office and place of business in Seattle, is engaged in the operation of ocean-going vessels for the transportation of persons and cargo between ports in the United States and ports in the Territory of Alaska. During the year 1950, the Company's revenue from its business activities exceeded \$100,000. There is no dispute, and I find, that the Company is engaged in commerce within the meaning of the Act.

II. The Union

American Radio Association, CIO, is a labor organization admitting to membership employees of the Company.

III. The Unfair Labor Practices

A.

Preliminary Statement

The Company is a member of Pacific Maritime Association, herein called PMA, and was a member of PMA's predecessor, Pacific American Ship-owners Association, herein called PASA. These associations, neither of which is a party to this proceeding, represented their member companies in collective bargaining negotiations with the Union. This case involves a contract between PASA and the Union, dated December 3, 1948, and the Union's applicable shipping rules governing assignments of radio officers to available positions under principles of "rotary hiring," a system based essentially upon hiring in rotation with an effort to distribute the work equally. The legality of that contract was in issue in *Pacific Maritime Association*, 89 NLRB 894. The succeeding contract between PMA and the Union, dated July 14, 1950, and executed after the Board's decision in the cited case, is also involved here along with the Union's revised shipping rules, both of which were in effect at the time of the hearing herein. The December 3, 1948, contract is herein called the 1948 agreement. The later contract is called the 1950 agreement. The complaint alleges that each agreement was unlawful per se and in its administration. Additionally, we have alleged discrimination against Horace W. Underwood, a radio officer who sought employment with the Company during the lives of the two agreements. First we

shall consider the issues concerning the agreements and the Union's shipping rules, and next the issues involving Underwood.

B.

The Agreements and the Union's Shipping Rules

1. The 1948 Agreement.

On December 3, 1948, PASA and the Union executed a collective labor agreement which, in part, was as follows:

Preference of Employment

Section 1. Employers [Member Companies of PASA] agree to recognize the Association [Union] as the authorized collective bargaining agent for all Radio Officers employed by Employers and when filling vacancies preference of employment shall be given to members of the Association.

Hiring

Section 2. The names of all unemployed members of the Association shall be placed on the Association's unemployed lists at the various offices of the Association. The offices of the Association shall be the central clearing bureaus through which all arrangements in connection with the employment of Radio Officers shall be made. For the purposes of promoting safety of life and property at sea, and to guarantee as far as is practical equal distribution of work among all members of the Association, the parties hereto agree that vacancies shall be filled in the following manner: Preference shall be given the Radio Officer longest unemployed who

can present proof of previous employment and/or experience on a job or jobs similar to that which is offered, and who in the judgment of the Employer is qualified, competent, and satisfactory to fill the job.

When any Radio Officer is rejected, the Employers shall furnish a statement in writing to the Association stating specifically the reason why he is not qualified, competent, and satisfactory to fill the job.

* * *

Discrimination

Section 3 (a). The Employers agree not to discriminate against any member of the Association for legitimate union activity.

Section 3 (b) of the contract provided certain substitute procedure for employment of radio officers by the Member Companies of PASA in the event that the above-quoted provisions were "suspended in any way as a result of legal action * * *," which substitute provisions were to be applicable during negotiations for "provisions complying with the law."

2. The Union's Applicable Shipping Rules.

The Union's shipping rules, correctly termed "National Marine Assignment Rules," which were adopted in early 1949 and were effective thereafter during the life of the 1948 agreement are quoted in part below. In order to facilitate an understanding of the changes later made in the rules, certain wording is emphasized. The rules provided:

Rule 1. It is the policy of the Union that the membership shall be offered employment through the Branch offices of the Union in accordance with the principle of rotary hiring. * * *

Rule 3. The term "member" or "membership" as used in these Rules shall mean a full book member or members in good standing in the American Radio Association.

National Assignment List

Rule 4 (a). A National assignment list shall be maintained by the Union. Such list shall be posted in each Branch office of the Union.

Rule 4 (c.) The assignment list shall be considered confidential and shall not be divulged in whole or in part to any non-member of the Union.

Registering on List

Rule 5 (a). All members desiring to obtain employment shall register for the assignment list and shall be designated as Active [available for employment] for a specific Branch office of the Union.

Assignment List Forms

Rule 6 (a). A member registering on the Assignment List shall fill out in full an Assignment List Application Form provided by the Union.

Assignment Procedure

Rule 7. All Active members shall be offered employment in rotation, in accordance with the following basic procedure:

1. The Port Assignment Committee shall first offer employment to the member registered on the Assignment List who is designated as active at the Branch Office and whose number is lowest in numerical order of the Assignment List (the highest in shipping seniority) * * * If such member shall accept the offered employment the member shall be issued clearance to the job.

2. If the member who has been offered employment in accordance with (1) hereof shall refuse such offer of employment or shall not answer such offer within a reasonable time, the Assignment Committee shall offer such employment to the member whose number is next lowest in numerical order of the Assignment List and who is designated as Active.

3. The procedure described in (1) and (2) hereof shall be continued until such time as the Assignment Committee shall secure a member who will accept the offered employment. [Entire emphasis supplied.]

The shipping rules also provided the method for compilation of a national assignment list each week. Members of the Union obtaining employment had their names transferred from the "Active" column to the "Employed" column, and in practice were dropped 30 places on the list. For each week of employment, in a permanent or temporary job, a member's number on the succeeding weekly list was increased by 30, thereby causing him to progress toward the bottom of the lists. Unemployed members moved upward to the place formerly held by members who had secured employment.

3. The 1950 Agreement.

On June 3, 1949, PMA replaced PASA.² On April 28, 1950, the Board issued its decision in the Pacific Maritime case, holding that the execution of the 1948 agreement had been violative of Section 8 (a) (1) by PASA because of the provision granting preference in hiring to members of the Union. The Board found "it unnecessary to consider either the closed-shop or the hiring-hall aspects of this contract." There is some dispute whether the Respondents acted under a contractual relationship until the new agreement was executed, but I believe it is unnecessary to recite the details. It is sufficient to say that the Company continued to obtain its radio officers through the Union.

After the decision in the cited case, PMA, representing the Company and its other members, and the Union began negotiations for a new agreement. The Union also undertook to revise its shipping rules. On July 14, the Union and PMA executed the 1950 agreement, retroactively effective to the date of the decision in the cited case. The new agreement recited that the 1948 agreement, and certain "Supplementary Agreements" not here in issue, were "reinstated with all rights and benefits accruing to the parties" and that the 1948 agreement was to "be continued until its expiration date [June 14, 195—, with a renewal provision from year to year]," with certain amendments described below. Section 1 of the 1948 agreement, entitled

²This date is taken from the findings in Pacific Maritime Association, above cited.

“Preference of Employment,” was amended to read:

Recognition

The Employers agree to recognize the Association as the authorized and exclusive bargaining agent for all Radio Officers employed by the Employers.

Section 2, entitled “Hiring,” was amended to read:

The Employers shall employ and continue in their employment on board their vessels Radio Officers procured from the list of unemployed Radio Officers on file at the nearest employment office of the Association [Union].

For the purpose of promoting safety of life and property at sea and to guarantee as far as practical equal distribution of work among Radio Officers, vacancies shall be filled in the following manner:

Preference shall be given to the Radio Officer longest unemployed who is qualified, competent and satisfactory and who can present proof of previous employment on vessels of one or more of the companies under agreement with the Association and who has worked as Radio Officer on U. S. flag vessels during the two-year period immediately preceding signing of this agreement and who has experience on a job similar to that which is offered.

The Association agrees to maintain, administer and operate its employment offices and to apply the aforementioned preferences in accordance with the law and assumes sole responsibility therefor.

When filling vacancies all Radio Officers shall produce official assignment clearance from the Asso-

ciation employment office. When any Radio Officer is rejected for employment, the company shall furnish a statement in writing to the Association employment office stating specifically the reason why he is not qualified, competent or satisfactory to fill the job. In the event the Association employment office is unable to furnish a Radio Officer to fill a vacancy, the provisions of this section shall be waived in such cases and the company shall be free to fill vacancies from other sources, and the Association employment offices thereupon notified.

The Employers agree not to discriminate against any member of the Association because of Union activity or because of race, creed or color.

The Association agrees that no applicant or prospective employee shall be discriminated against because of membership or non-membership in the Association or by reason of race, creed, color or national origin.

Section 3, entitled "Discrimination," was amended to read:

Association Security

The Employers agree, as a condition of employment, that all employees in the bargaining unit shall become and remain members of the Association thirty (30) days after the effective date of this clause or thirty (30) days after date of hiring, whichever is later.

The foregoing clause shall become effective when the Association shall have been certified by the National Labor Relations Board as provided by

Section 8 (a) and (3) [sic] of the amended act, or when certification shall no longer be required, whichever is sooner.

4. The Union's Revised Shipping Rules.

During June, 1950, the membership of the Union at its various port offices adopted new shipping rules. The adoption in Seattle was on June 21, and they became effective there simultaneously with the new agreement with PMA. These rules need not be quoted extensively. Reference may be made to the earlier rules above quoted, particularly to the emphasized wording there. The new rules provide for a continuation of rotary hiring, with assignments to be in rotation in an effort to spread available work among the applicants. No distinction is made between members and non-members in placement on the assignment lists. The words "membership" and "members" were deleted from the earlier rules, and the words "Radio Officer(s)" substituted therefor. The definition of a member in Rule 3 was supplanted by the definition of a "Radio Officer" as "a qualified and experienced Radio Officer who is eligible for employment on vessels under contract to the Union." The reference to "Branch offices" of the Union are now references to "Branch Hiring Halls." Rule 4 (c) of the earlier rules, providing that the assignment lists should be confidential to members, was deleted. Also deleted were the provisions in Rule 7 that assignments were to be offered by the port assignment committees, the rule

now reading merely that "employment shall be offered" in the manner there provided.³

5. The Complaint's Allegations Concerning the Agreements and the Shipping Rules.

The complaint alleges that both the 1948 and 1950 agreements contain preferential employment provisions which are unlawful because of a failure to satisfy the requirements in the proviso to Section 8 (a) (3) of the Act, both as to the conduct of a union-shop election and the permissible limits of union security provisions. It is undisputed that the Union has not been authorized by the Board to enter into a union security agreement.

With respect to the Company, the complaint, as amended, also alleges inter alia that it violated Section 8 (a) (1), (2) and (3) by entering into the 1948 and 1950 agreements, by "knowingly assenting to and participating in the administration of" the 1948 agreement "as amended" which required the practice of obtaining all of its radio officers exclusively" from the Union, and by "knowingly assenting to and accepting the assignment lists established by

³Rule 10 (e) of the 1950 rules provides that, "Radio Officers who are not members of the Union shall help defray the expense for upkeep of the Branch Hiring Halls by the payment of \$25.00 for each three months each Radio Officer's name is registered for employment on board a union contract vessel. Such fee shall be paid for each three months in advance." The Union's constitution in effect during 1949 provided that membership dues were to be \$15.00 quarterly, payable in advance, but the record does not disclose whether the amount has been changed.

the Union pursuant to alleged discriminatory shipping rules.

With respect to the Union, the complaint is silent concerning the adoption of new shipping rules during 1950, it being alleged instead that the former shipping rules here remained effective. The complaint also alleges inter alia that by entering into the 1948 and 1950 agreements, by adopting and administering discriminatory shipping rules, and by maintaining and administering assignment lists pursuant to such rules, the Union violated Section 8 (b) (1) (A) and (2) of the Act.

6. Conclusions Concerning the Agreements and the Shipping Rules.

The questions to be decided at this point relate to the agreements and the shipping rules and the practices of the Respondents thereunder without regard to the alleged discrimination against Underwood, which is considered separately below after a chronological statement of the facts surrounding Underwood's relations with the Respondents.

The initial question involves the 1948 agreement between PASA and the Union, the execution and performance of which are alleged to have been violative of Section 8 (a) (1), (2) and (3) by the Company and Section 8 (b) (1) (A) and (2) by the Union. As related above, this is not the first time the Board has had occasion to consider the 1948 agreement. In the Pacific Maritime case above cited, where the Union was not a party respondent the Board found that PASA had violated Section 8

(a) (1) by the execution of the agreement because of the unlawful preference provision therein. The complaint in that case also alleged a violation of Section 8 (a) (3) in the enforcement of the agreement, but the Board held that there was a "complete lack of evidence as to enforcement of the illegal provisions," and dismissed the 8 (a) (3) allegation. There was no 8 (a) (2) allegation, the absence of which was specifically commented upon by the Board in framing its remedy. As detailed above, after the issuance of the Board's decision, PMA and the Union negotiated new contractual provisions which they contend, contrary to the General Counsel, are lawful. The Union also adopted new shipping rules to replace those which are alleged in the complaint herein to have been discriminatory. Under these circumstances, I do not believe that issues should be litigated anew, that an alleged violation of Section 8 (a) (2) based upon the 1948 agreement should be entertained, or that the conduct of the Respondents pursuant to that contract and applicable shipping rules should be the subject matter of litigation at this late date, except to the extent that there is alleged an instance of specific discrimination. It would not effectuate the purposes of the Act to do so. Cf. *Califruit Canning Company*, 78 NLRB 112. To the extent that there was alleged unlawful discrimination against Underwood pursuant to the 1948 agreement and applicable shipping rules, the issues are properly subject to litigation in this proceeding. Cf. *Agar Packing & Provision Corporation*, 81 NLRD 1262.

Turning to the 1950 agreement, the basic allegation of the complaint is that the document is per se unlawful because of preferential employment provisions to members of the Union by reason of the Company's utilization of the Union's employment office as its sole source of Radio Officers, as set forth in Section 2 of that agreement, and because there has been no union-shop election to authorize the first paragraph of Section 3 thereof. On the other hand, the Respondents argue that the Company's use of the Union's employment facilities in securing radio officers, where there is no preferential employment provision based upon membership in the Union, and where instead the agreement expressly provides that the Union shall operate its employment facilities "in accordance with the law"⁴ and that "no applicant or prospective employee shall be discriminated against because of membership or non-membership in the" Union, is a lawful

⁴The union asserts that the contractual phrases, "qualified, competent and satisfactory," in reference to radio officers, and "in accordance with the law," include observance by the Union of certain prerequisites for dispatching radio officers: (1) A second class, or better, license by the Federal Communications Commission; (2) "a license by the U. S. Coast Guard as a condition to the right to be designated as a radio officer by Congressional Act (Public Law 525, 80th Congress, Second Session)"; and (3) screening by the Coast Guard of "all seamen (including, of course, radio officers) as to their loyalty and security risk status (Executive Order 10173, October 18, 1950; Fed. Reg. 7005, interprets or applies 40 Stat. 220, as amended, 50 U.S.C. 191)."

arrangement sanctioned by the Board in National Union of Marine Cooks and Stewards, 90 NLRB No. 167. The similarity between the proposed contractual provision in that case and the language of Section 2 of the 1950 agreement need not be set forth. In short, I find that the cited case is apposite and that Section 2 is not per se unlawful. Likewise, I find that the shipping rules of the Union, adopted during June, 1950, are not per se discriminatory against non-members of the Union. With respect to Section 3 of the 1950 agreement, the General Counsel's contention appears to be that the union security provision in the initial paragraph is in violation of the Act regardless of its postponed effective date as set out in the second paragraph.⁵ This contention must be rejected. Gulf Shipyards Corporation, 91 NLRB No. 25.

Turning next to the question whether the 1950 agreement and the Union's applicable shipping rules have been administered in a discriminatory manner between members and non-members of the Union, the allegations insofar as they involve Underwood are deferred to a subsequent portion of this Report. There is no substantial evidence of a

⁵The record discloses that all radio officers assigned by the Union to fill vacancies on vessels of the Company after execution of the 1950 agreement were members of the Union when assigned, but it does not disclose whether they have retained such membership, nor does it disclose whether other radio officers already occupying permanent positions aboard vessels of the Company have retained their membership.

discriminatory administration involving other radio officers, although there is testimony by Carl Lundquist, port agent for the Union in Seattle at the time of the hearing, that only members have been listed on its national assignment lists since adoption of the existing shipping rules. But this fact does not establish that those rules, not per se discriminatory, have been misapplied to a discriminatory end. The rules were approved by the Seattle branch of the Union on June 21, 1950, at which time there were more radio officers than there were available jobs, with the result that applicants had waited long periods of time for employment. On or about June 25, hostilities began in Korea, after which the demand for radio officers increased consistently until the available jobs outnumbered the applicants. Lundquist testified that with the increase in job opportunities, non-members sought employment through the Union. Insofar as the record discloses, non-members who did so were dispatched to jobs reasonably soon after applying, and some of them first sought membership in the Union and became "permit card members."⁶ The name of none of the

⁶During the period of June 29, 1950, to February 17, 1951, the Union made approximately 50 assignments of radio officers classified by it as non-members, some of whom were dispatched to more than one job, and eight of whom were dispatched through the Seattle branch of the Union. The name of none of the approximately 50 persons appears on a national assignment list as of the time he was dispatched. One of the eight dispatched from Seattle was listed on other records of the Union as

non-members appears on any national assignment list, but the explanation offered by Lundquist is a reasonable one, uncontroverted by the record. That is, the lists are prepared weekly in the national headquarters of the Union for distribution to the several branch offices. The basic purpose of the lists is to maintain records of radio officers who are seeking employment, designated on them as "Active," and unemployed radio officers who for personal reasons are not seeking employment, listed as "Inactive." In order to show the relative places of these individuals, week by week, it is necessary that the lists also contain the names of some employed radio officers, listed as "Employed," whose numbers increase at the rate of 30 places a week to make way for the names of "Active" and "Inactive" radio officers who steadily move upward on the lists during periods of unemployment. A sizable majority of the union members are not named on a recent assignment list, that of March 10, 1951—

being in "bad standing"; another was listed as a "permit card member," that is, as seeking membership; and two were listed as being on a "deferred list," that is, former members seeking reinstatement. The record does not disclose the union status, if any, of the four remaining radio officers who were carried on the Union's record as non-members and who received assignments from the Seattle branch. Of this entire group of radio officers, only Dallas Hughes, listed as being in "bad standing," was a witness. He testified for the General Counsel that he registered for employment about August 3, 1950, and was dispatched about that date, and that thereafter he was dispatched on four other occasions.

the Union has about 1,500 members—for the reason that they had been employed for periods of time long enough to give them numbers so low in shipping seniority as to place them at points on the list beneath the name of the radio officer listed as “Active” or “Inactive” at the bottom thereof. Since the basic purpose of the lists is to show the relative standing of “Active” and “Inactive” men, rather than “Employed” men, the names of employed men with higher numbers than as indicated are not listed.⁷ Lundquist’s uncontroverted explanation for the absence of names of non-members on the lists prepared under the current shipping rules is two-fold: (1) under the rules, a prerequisite to obtaining a place on a national assignment list is to register for employment, and some non-member radio officers did not do so;⁸ and (2) although registering, a radio officer would not be

⁷Shipping Rule 8 (b) 6 provides that, “The names of Radio Officers in the Employed column who shall * * * [by reason of dropping 30 places on the assignment lists for each week of employment] be in higher numbered positions than any held by Radio Officers registered as Active or Inactive, shall be removed from the list * * *”

⁸Rule 5 (a) provides that, “All Radio Officers desiring to obtain employment shall register for the Assignment List and shall be designated as Active for a specific Branch Hiring Hall of the Union [according to the applicant’s preference of the port from which he wishes to be dispatched].” Rule 6 provides for “Assignment List Application Forms” and that applications be transmitted to the Union’s national office for placement on the assignment lists.

given a place on such a list if, before the next weekly compilation, he had been referred to a job,⁹ in which category a number of non-member radio officers fell. After the termination of any employment, whether the radio officer be a member or non-member of the Union, he can achieve a place as "Active" on a national assignment list only by again registering therefor and not obtaining employment anew before the compilation of the next list. It does not appear that any non-member was treated any differently in this respect than a member.

Upon the evidence, there being no showing that under the existing shipping rules a place on a national assignment list has been denied to a non-member under circumstances where it would not have been denied to a member, I find that there has been a failure of proof that the Union's shipping rules have been misapplied so as to result in

⁹Rule 8 (b) 7 is as follows:

The names of Radio Officers who have registered as Active or Inactive during the week, and who were not previously registered on the List during such week, shall be added to the Active or Inactive columns at the end of the List in numerical order, according to the date and hour each Radio Officer registered. This provision shall not limit the right of or prevent any Radio Officer who has registered as Active during the week prior to a compilation of the List and has not as yet been physically added to the List from being offered and accepting assignment. If such Radio Officer shall have accepted an assignment before his name shall have been physically added to the List, his name shall not be added during the next compilation of the List.

discrimination against radio officers because of non-membership. Accordingly, the proof does not establish that the 1950 agreement has been unlawfully administered, and I shall recommend that the complaint be dismissed in all respects other than the allegations concerning Underwood, which will now be discussed.

C.

The Discrimination Against Underwood

1. Chronology of Events

Prefatorily to considering the legal aspects of the alleged discrimination against Underwood, it is necessary to relate at some length the factual situation in his relations with the Respondents. On March 1, 1949, during the early life of the 1948 agreement, Underwood applied for membership in the Union. The application was acted upon favorably. While the record is silent on the period of his earlier membership in the Union or its predecessor, American Communications Association, he had formerly worked for the Company and it may be inferred that this was not his initial application.¹⁰

Beginning with April 1, 1950, soon after his latest membership in the Union, Underwood wrote a series of letters to it in which he said inter alia that he was interested only in employment by the

¹⁰As long ago as 1946, Underwood had made it known to representatives of the Union's predecessor that he was interested only in employment on vessels operated by the Company.

Company, that he opposed rotary hiring, and that he objected to "competing" under the rotary system with other radio officers for such employment. As clarified by his testimony, Underwood's position was that he preferred to work aboard vessels sailing in the Alaska trade, that employment by the Company offered the best opportunity therefor, that he wanted to be regarded as one "of the [Company's] licensed officers * * * as the master and the mates," who apparently were not employed under a rotary system, and that it was unfair for radio officers who were willing to work for any employer to compete with him under rotary hiring for employment with the Company, which offered a "very small proportion of the total jobs," when he did not compete with them for the greater number of jobs available with all other employers.

On March 31, 1949, while a member of the Union, Underwood accepted referral to the Coastal Rambler, one of the Company's vessels. He remained so employed until early August when, contrary to his expectations, the vessel was temporarily removed from service and the crew was paid off. Underwood's assignment to the Coastal Rambler had been a "permanent" one. He therefore had the right under the Union's shipping rules to exercise a choice between the following alternatives: (1) retaining his position aboard the Coastal Rambler by "standing by" the vessel, without compensation therefor, and seeking employment which did not require use of his radio operator's license, or (2) seeking employ-

ment requiring use of his license by taking a place on the assignment list at an appropriate number determined by the period of his employment on the Coastal Rambler. The latter alternative involved relinquishing his position on that vessel, in which event, when the vessel next sailed, the position would be offered to the radio officer at the top of the assignment list. At first Underwood chose to stand by. He sought to obtain unemployment compensation during the period of standby, but found that under the rules of the State Unemployment Compensation Commission he was not entitled to such compensation unless he was actively seeking employment at a position requiring use of his license. Faced with the choice of standing by the Coastal Rambler without compensation from the Company, or relinquishing the standby right and drawing unemployment compensation, Underwood chose the later. On August 10, he registered for a place on the assignment list as actively seeking employment, but his number was quite low because he had dropped 30 places a week for the period of about 18 weeks aboard the Coastal Rambler. When that vessel returned to service in late September, the position of radio officer was offered to another member of the Union with a greater period of unemployment than Underwood, consistent with the Union's effort to equally divide the employment opportunities among its members.

During early September, a temporary position became available aboard the Palisana, another of

the Company's vessels, as relief operator for Tom Josserand who held the position in a permanent capacity and who had chosen to leave the vessel for an uncertain period, maintaining his right to stand by and to return to the position later. Since Josserand had the right to return and replace the operator who relieved him, the result for that operator would be temporary employment with the consequent drop of 30 places a week on the assignment lists for each week of employment. The relief job was offered to a number of unemployed operators, who declined it. Finally, in this way, Underwood's name was reached. On September 14, he accepted the assignment, hopeful that Josserand would not return to the vessel and that somehow he could keep the position in a permanent capacity. Under the Union's shipping rules in existence sometime earlier, an operator who held a temporary assignment could retain the position in a permanent capacity if the operator being relieved chose not to return to the vessel. These rules had been changed in early 1949, however, and Underwood knew when he accepted the assignment aboard the Palisana that, under rules then existing, if Josserand chose not to return to the position, thereby opening it for a permanent assignment, the radio officer at the head of the assignment list would have the initial choice.

About November 23, the Palisana was put in idle status for approximately a month, and the crew was paid off. On December 1, Underwood registered

for a place on the national assignment list as actively seeking employment.¹¹

Underwood's experiences in the Coastal Rambler and Palisana positions made him aggrieved. He was so far down the assignment list that, as he testified, he believed that not until 1951 could he be reached for employment by the employer of his choice, the Company. Underwood was wrong in this estimate, as will be developed, but the point is that his opposition to rotary hiring and to the Union's shipping rules gained momentum. He felt that he was entitled to seniority rights with the Company and that the rotary hiring system resulted in discrimination against him. On December 23, Underwood wrote to the Company and requested "retention" of the position aboard the Palisana. In the letter, Underwood termed the position his own, which he "was forced to relinquish a short time ago on account of the temporary lay-up of this vessel and certain illegal bylaws of the" Union. Underwood, who had received preference in employment by reason of his membership in the Union,

¹¹Underwood testified that sometime subsequent to December 1, 1949, Ralph Miller, then the Union's port agent in Seattle, offered him a temporary position aboard the Baranof, a vessel of the Company's, which he declined because of its temporary nature. The incident involving the Baranof occurred before January 17, 1950, because it is set out in the charge in Case No. 19-CB-90, filed on that date. An examination of exhibits showing the voyages of the Baranof and the radio officers assigned by the Union to positions aboard, establish that the incident occurred while Underwood was a member of the Union.

did not have reference to the provisions of the Act in his allegation that the Union had "certain illegal bylaws." Instead, his reference was to the rotary hiring aspects of the bylaws which, as he saw it, were in disregard of his claimed seniority rights with the Company and which had not enabled him to obtain employment permanently with the employer of his choice. As the Company says in its brief, Underwood prefers "a system based upon job availability and seniority with one company * * * [His] position and views would be the same and would have been the same under a rotary hiring system operated by employers on an industry-wide basis without the union in the picture at all."

By December 27, Jossierand had decided not to return to the Palisana. On that day, the vessel was removed from idle status preparatory to sailing and, under rotary hiring, Cyrus Wagoner was offered the position in a permanent capacity. Wagoner accepted.¹² On December 28, Underwood wrote a letter of resignation to the Union, saying inter alia that he had resolved for the New Year (1) to seek to avoid approaching poverty which had been caused by his "poor luck" in obtaining employment under the Union's "employment roulette wheel [the system of rotary hiring] * * *," and (2) "To fight a system * * * [which] will tolerate a set of bylaws

¹²Although the Palisana was in idle status at various times thereafter, Wagoner apparently chose to stand by during those occasions, rather than to seek other employment requiring use of his license, because at the time of the hearing he still held the position.

that foster the complete elimination of the freedom of the individual and the utter disregard of earned and proven seniority rights.”

As related, Underwood was interested in employment with the Company only. He testified that he would accept other employment only “under duress,” the force of economic necessity. Accordingly, after resigning from the Union Underwood did not make application for employment to any other employer represented by PASA. On or about December 29, Underwood called upon William Felton, port engineer for the Company, and requested employment. He filled out an application blank and left it with Felton.

At a union meeting during January, 1950, Underwood’s resignation was accepted, and during that month his name was removed from the national assignment lists¹³ because he resigned from the Union.¹⁴

¹³The assignment list prepared on December 31, 1949, on a nationwide basis contained Underwood’s name as number 828. Of the radio officers desiring to ship out of Seattle, Underwood was number 21. The copy of the list which was sent to the Union’s Seattle office shows Underwood’s name marked through with ink, after which appear the words: “Out of Union.” It does not appear, however, when the deletion was made, and Underwood’s name appears on the national list for the following week, ending January 7, 1950, opposite number 796, Underwood having advanced 32 places toward the top of the list during the period of a week. Underwood appears not to have been named on any national list thereafter.

¹⁴The Union contends that Underwood’s name was removed from the lists because it was understood

On January 17, 1950, Underwood filed charges against both Respondents in Cases Nos. 19-CB-90 and 19-CA-277. Copies of the charges were served upon the respective Respondents on January 19 and 21, 1950. Beginning on March 3, and continuing for about three months, Underwood wrote a series of letters to the Company in which he expressed (1) a continuing interest in obtaining employment with the Company, (2) his opposition to rotary hiring of radio officers, and (3) his preference for hiring based upon seniority with the Company which, in his judgment, would have afforded him a better opportunity for obtaining employment with it. So far as the record discloses, the Company has never made it a practice to employ radio officers under

that he so desired, preferring to seek employment through other channels. This contention is unconvincing. At that time, before the opening of hostilities in Korea, the number of radio officers seeking employment through the Union far surpassed the number of job openings on any given date. The 1948 agreement then in effect provided that preference in employment be given to members of the Union, and the applicable shipping rules provided that the assignment lists should be restricted to members and were designed to give them preference in employment. Moreover, the failure of the Union to reinstate Underwood's name to the assignment lists during the early months of 1950, when he was seeking employment with the Company and when the Company requested of the Union that he not be discriminated against, as described below, is indicative that his name was removed, and remained removed, from the assignment lists during those months because he had resigned from the Union.

the system advocated by Underwood. See Pacific American Shipowners Association, 80 NLRB 622.

On March 20, Underwood filed an amended charge in Case No. 19-CA-27, copy of which was served upon the Company on March 21. On March 29, the Company wrote to the Union and to Underwood, enclosing to each a copy of its letter to the other. In the letter to the Union, the Company said that Underwood had made application for employment on December 29, 1949, and that another radio officer, Dallas Hughes, had made application on December 12. The letter contains the following paragraph:

We request that when radio officers are ordered [by the Company] from your office that these applicants, upon registering with you, be dispatched without discrimination as to union or non-union affiliation or other discrimination whatsoever, anything in our collective bargaining agreement to the contrary notwithstanding. It is also requested that their registration with you be deemed effective from the date of the application filed with us. We, of course, reserve the right to reject for sufficient cause any person dispatched to us.

The letter to Underwood was as follows:

* * * We are unable to give consideration to applicants for employment made to us by mail. We make use of the employment facilities of the office maintained by the American Radio Association * * *

You are requested to register with that office

and we have requested that you be dispatched to us without discrimination * * * If after so registering you consider that any discrimination has been practiced against you, kindly advise us in writing.

On April 3, 1950, following the Company's suggestion, Underwood called at the Union's office. He testified that he registered for employment, but the circumstances are not clear. He did not fill out an assignment slip, which is the normal and customary manner in which a radio officer seeking employment obtains a place on the national assignment lists. I believe, however, that it is immaterial that he did not do so. His name had been discriminatorily stricken from the assignment lists of December 31, 1949, and January 7, 1950. Had it not been stricken therefrom, it would have continued to rise toward the top of later lists, in accord with the principles of rotary hiring as persons ahead of him obtained employment, until he was offered employment which he would have accepted aboard the Alaska on May 5, 1950, as described below.

Also on April 3, Underwood wrote to the Company again. On April 12, the Company wrote to the Union, enclosing Underwood's letter and saying that Underwood had expressed the opinion that the Union would discriminate against him. The Company voiced the hope that the Union would not do so. On April 16, according to the undenied testimony of Underwood, which I credit, he chanced to meet Ralph Miller, then port agent of the Union

in Seattle, and Miller offered him an assignment to another of the Company's vessels, the Flemish Knot, if he would withdraw the charge against the Union. Miller said also, as Underwood testified, that he would hold a union meeting to determine whether the membership would reinstate Underwood. The assignment on the Flemish Knot was declined by Underwood because he believed that it might be of short duration, and he asked Miller for a guarantee of six months' work as a condition for withdrawing the charge.¹⁵ Miller replied that he would take up the matter with the membership, and Underwood heard no more about it.

On April 19, Miller responded to the Company's letter, saying that Underwood and Hughes had been listed for employment and that there would be no discrimination against them. Underwood's name does not appear to have been restored to a national assignment list, however.

On April 28, the Board issued its decision in the Pacific Maritime case.

On May 3, 1950, the Company's vessel, Alaska, which had been laid up since October 1, 1949, re-

¹⁵The position on the Flemish Knot was filled by the assignment on April 21 of Gena C. Hallett, a radio officer who had a higher position than Underwood on the national assignment lists from which Underwood's name was stricken. The position on the Flemish Knot appears to have been a permanent and relatively long one, contrary to Underwood's expectations. With the exception of two periods of idleness, totaling about two weeks, the vessel was in continuous service from April 19, 1950, to at least late February, 1951, when the hearing began.

turned to service. Albert Dittberner and George D. Johnston, chief radio operator and first assistant, respectively, had retained their permanent positions on the vessel by remaining in standby. The second assistant radio operator during late 1949 had been Jesse D. Sneff, who apparently had not chosen to stand by the vessel. On May 5, Lewis A. Deyo was dispatched by the Union to fill Sneff's former position. For reasons detailed below, I find that the failure to offer this assignment to Underwood was discriminatory within the meaning of the Act. On May 7, 1950, Underwood wrote to the Company that it could "plainly see" that he would "get nothing but discrimination from" the Union, and he asked for employment in return for which he would withdraw the charges against the Company. The record does not disclose whether Underwood had knowledge of or reference to the assignment of Deyo. Nor does it appear that the Company responded to Underwood's letter.

During June, 1950, the membership of the Union at its various port offices adopted the new shipping rules. On July 14, the Union and PMA executed the 1950 agreement. Because of the allegations of the complaint that Underwood was unlawfully discriminated against in the administration of that agreement, it is necessary to continue the factual recital concerning Underwood's relations with the Respondents, although unlawful discrimination against Underwood was practiced on May 5 in the failure to offer him the assignment aboard the Alaska.

On July 23, 1950, Underwood, having been unable to secure employment with the Company, went to Kake, Alaska, for employment as a radio operator in a cannery. On September 11, while there, his counsel filed in his behalf charges in Cases Nos. 19-CB-135 and 19-CA-358.

On October 9, 1950, having returned from Kake, Underwood telephoned Lundquist, who had succeeded Miller as port agent. Underwood said that he was available for employment within the following limitations: by the Company only, in a permanent capacity, aboard a vessel sailing in the Alaska trade, the voyages of which were to be of short duration. Lundquist had established a practice of preparing port assignment lists based upon the names of radio officers on the national lists who desired to work out of Seattle, and he noted on the port list in use that week that Underwood had made known his availability for employment within limits. On October 13, Underwood declined referral by the Union to a position on a vessel in the Military Sea Transport Service because he preferred employment with the Company.

On December 5, Underwood again telephoned Lundquist, saying that he would accept a temporary or permanent position on vessels of the Company in the Alaska trade.¹⁶ Underwood also said that he

¹⁶Lundquist testified that this telephone conversation occurred on December 5, while Underwood fixed the date as December 12. The Seattle port assignment list indicates that the conversation took place during the week of December 4, rather than the following week, and I find that the correct date was December 5, as testified by Lundquist.

had been registered for employment since December 1, 1949, the date of registration following his employment aboard the Palisana, and he asserted that his name therefore should be at the top of the current national assignment list. The basis of Underwood's contention seems to have been that his name should have continued to move upward on the lists each week after that date, including the period of his employment in Kake. Lundquist said to Underwood, erroneously, that Underwood's name was at the bottom of the national assignment list, "where it belonged." He also said, correctly, that Underwood's name was "not at the bottom" of another list, presumably the port assignment lists upon which Lundquist had placed Underwood's name. Lundquist said further that he could not discriminate against Underwood, nor could he discriminate against members of the Union.¹⁷

Between October 9 and December 5, the dates of the two telephone conversations, Underwood did not visit the Union's hiring hall. In that period, there were only two vacancies within the limitations imposed by him, one of which, aboard the Victoria,

¹⁷The finding that Lundquist said that Underwood's name was at the bottom of the national assignment list "where it belonged" is based upon Underwood's testimony. Lundquist testified that he could not recall what he had said in the telephone conversation, but that later he realized that he may have used "poor language" which could have caused Underwood to obtain a "misconception," and that he, Lundquist, sought to correct any misconception when they met on December 13, as described below.

was filled in a "pierhead jump," an emergency situation caused by the failure of the operator regularly assigned to the vessel to appear for the voyage and the assignment of an unemployed operator regardless of his place on the national assignment list.¹⁸ There was inadequate time in which to reach Underwood, whose residence is on Vashon Island, between Seattle and Tacoma. The second vacancy, on the Denali, was filled by an operator who was higher than Underwood on the national assignment list of January 7, the last list upon which Underwood's name appeared.

On December 13, Underwood, accompanied by Hughes, called at the Union's hiring hall and talked with Lundquist. There was some discussion about dispatching radio officers to employment, and Underwood spoke of his inability to retain the permanent position aboard the Coastal Rambler during 1949 because of the rules of the State Unemployment Compensation Commission which he characterized as discrimination against him. Underwood reiterated his statement of December 5 that he would accept temporary employment on vessels of the Company in the Alaska trade, and again insisted that his name should appear at the top of the current national assignment list because he had not received referral to employment since December 1, 1949, about a year earlier. Lundquist said that Underwood's name was being carried on the port

¹⁸Rule 20 (2) of the Union's shipping rules envisions assignments out of rotation in situations of this nature.

assignment lists, as it had been since Underwood's telephone call to Lundquist on October 9. Lundquist also said that Underwood's name did not appear on the national assignment lists because he was not a union member.¹⁹

On December 19, by telegram, Lundquist advised Underwood of a position aboard a vessel of the United States Government sailing in Alaskan waters. Underwood declined it because the voyage was scheduled for four months, too long a period to suit his wishes, and also because he preferred to await employment with the Company. Between that date and February 6, 1951, shortly before the hearing herein, six vacancies occurred aboard vessels of the Company within Underwood's limitations. The Union did not utilize telephone or telegraph service in an effort to inform Underwood of any of the vacancies nor does it appear that he visited the

¹⁹This finding is based upon the testimony of Underwood and Hughes, which is flatly contradicted by Lundquist. While I am mindful that Hughes' testimony on the point was obtained only after a leading question, and that the testimony of Underwood and Lundquist must be scrutinized because of their interests, I think that the testimony of Underwood and Hughes is to be accepted. Clearly, as already found, Underwood's name did not appear on national assignment lists after January 7, 1950, and at least until the new shipping rules were adopted, because he was not a member of the Union. This finding, however, does not resolve the question whether the Union would have refused Underwood a place on the national assignment lists under its existing shipping rules had Underwood sought to register therefor. The issue is discussed below.

Union's hiring hall to seek an assignment. There is uncontradicted testimony by Lundquist, however, that in one instance the vacancy was filled by a radio officer who was entitled to the assignment in preference to Underwood under a non-discriminatory application of the shipping rules, while in the remaining five instances the positions had to be filled quickly and there was too little time in which to attempt to contact Underwood on Vashon Island and have him arrive at any of the vessels before sailing time.

On February 27, during the course of the hearing, the Union offered to refer Underwood to a permanent position aboard a vessel sailing in the Alaska trade, the *Pacificus*, operated by Coastwise Line, a member company of PMA. Underwood accepted, and he was employed in that position when the hearing closed about a month later.

2. Conclusions Concerning Underwood

The amended complaint alleges that the Union, by utilizing discriminatory shipping rules and assignment lists, refused to dispatch Underwood for employment with the Company, thereby causing the Company to discriminate against Underwood in violation of Section 8 (a) (3) of the Act, and thereby itself violating Section 8 (b) (2).²⁰ The allegations

²⁰The complaint also alleges that the Union refused to dispatch Underwood to positions with employers other than the Company. Since Underwood was not an applicant for other employment until he accepted the position aboard the *Pacificus*, having previously rejected assignments with other employers and having testified that he would accept such assignments only "under duress," this allegation has no merit.

that the Company discriminated against Underwood are in substance twofold: (1) by obtaining all of its radio officers through the Union and by accepting and assenting to assignment lists from which the Union unlawfully excluded Underwood, and (2) by refusing to employ Underwood after he made application directly to the Company during December, 1949.

First to be considered are the allegations against the Union and the initial allegation against the Company during the period following Underwood's resignation from the Union and before execution of the 1950 agreement. It will be recalled that Underwood, while a member of the Union, had a "permanent" position aboard the Coastal Rambler and that in order to draw unemployment compensation he chose not to remain in standby status when the vessel was temporarily removed from service. Underwood regarded the situation as one of discrimination against him, but it is clear that there was no discrimination as contemplated by the Act. As a consequence of employment aboard the Coastal Rambler, and later employment aboard the Palisana, Underwood dropped so far down the assignment lists that he believed there was no prospect for employment with the Company in a position to his liking until 1951. In this respect Underwood was mistaken, but he felt prejudiced by the Union's shipping rules, uniformly applied to him and other members. Accordingly, he resigned his membership and sought to achieve directly from the Company the employment which he desired.

As mentioned above, on May 5, 1950, Underwood was unlawfully denied employment. The circumstances will be related. Underwood's name had been removed from the national assignment lists because of his resignation from the Union. His name last appeared on the list of January 7, 1950, with the number 796. From the time of his resignation until May 5, there were six vacancies on vessels of the Company suitable to his preferences.²¹ All these vacancies were filled by referral of radio officers with lower numbers than Underwood (higher numbers in the order of shipping seniority) on the list of January 7, which is consistent with Underwood's own analysis of his poor prospects for employment with the Company at the time of his resignation. On May 5, which was subsequent to the Company's written request of the Union that Underwood be referred for employment without discrimination, a vacancy in a permanent position aboard the Alaska was filled by the Union's referral of Lewis A. Deyo, and at this point, had Underwood's name not been stricken from the assignment lists he would have been entitled to referral to the position ahead of Deyo under the principles of rotary hiring. The contention of the Union and the Company is that Deyo was entitled to the assignment, even assuming that Underwood's name had remained on the assign-

²¹February 23 on the Square Sinnet, February 24 on the Denali, March 14 on the Nadina, April 5 on the Coastal Rambler for its initial voyage in 1950, April 8 on the Lucidor, and April 21 on the Flemish Knot.

ment lists.²² Documentary evidence was offered by the Union to establish this contention, but when it is examined in the light of the entire record a fallacy is apparent. As contrasted with Underwood's place on the January 7 list, #796, the Union incorrectly asserts that Deyo's number was 793, from which point he had advanced to number 544 at the time he was offered referral to the Alaska. The fact, however, is that Deyo's number on the January 7 list was 815 or thereabouts, as set out in the footnote.²³

²²In its brief, the Company argues that "This exchange of correspondence [with the Union] clearly establishes an agreement between the union and the company as to Mr. Underwood which removed any alleged application of the illegal portion of the hiring provisions of the December 3, 1948, agreement to Underwood. The fact that Underwood's registration was accepted on April 3 [when Underwood visited the Union's offices] and presumably made effective * * * on December 29, 1949, [prior to the effective date of Underwood's resignation from the Union] in accordance with the Company's request * * * also pointedly demonstrates that the normal channels of employment were at all times open to Underwood irrespective of his union status * * * [At] all times subsequent to April 3, 1950, Mr. Underwood received equal treatment in the normal channel of employment." The fact that the Union did not restore Underwood's name to the national assignment lists, plus the facts surrounding the referral of Deyo, rather than Underwood, to the position aboard the Alaska, disprove the Company's contention.

²³The assignment list for January 7 was not offered in evidence. The list of radio officers dispatched by the Union to positions with the Company shows Deyo's referral to the Alaska, and after

Under the facts herein, the preference in employment to members of the Union resulted in an unlawful denial of employment to Underwood.²⁴ The record leaves no doubt that Underwood would have

Deyo's name there is the number 793 to signify his place on the January 7 list. That number had been marked through under circumstances which were not detailed, and the number 815 substituted. The Union's testimony concerning Deyo's referral assumed that number 793 was correct, thus giving Deyo preference over Underwood for the referral. The number 815, or a number thereabouts, is correct, however. This is so because on the assignment list dated December 31, 1949, only a week earlier, which was received in evidence, Underwood was number 828 and Deyo was number 845. Since Underwood was unemployed, Deyo could not have advanced over and beyond Underwood on the list of January 7. The conclusion that Deyo's number on the latter list was 815 or thereabouts is further supported by the fact that the number for Harry O. Buer thereon is 812, and only a few places separated these two individuals on the list dated December 31, Buer having been #843 thereon.

²⁴In its brief, the Company asserts that the record is barren of evidence that Underwood informed it that he had resigned from the Union, that it knew of the resignation at times material, and that Underwood advised it that union affiliation or non-affiliation played any part in his opposition to rotary hiring. Instead, says the Company, its information was that Underwood opposed rotary hiring on an industry wide basis, as described herein, and "that he believed that the company should establish a system based upon seniority with the company which would afford him a better chance of securing employment" with the Company. In fact, however, the amended charge in Case No. 19-CA-277, served upon the Company on March 21, 1950, alleges that the Company refused to employ Underwood "to

accepted the position aboard the Alaska. I find that the Company discriminated against Underwood in violation of Section 8 (a) (3) and (1) of the Act, and that, by causing the Company to do so, the Union violated Section 8 (b) (2) and (1) (A) thereof.²⁵

Turning to the Company's refusal to hire Underwood after his application for employment during December, 1949, the General Counsel contends that there was a continuing duty upon the Company, be-

encourage membership in" the Union in violation of Section 8(a)(3), and the Company's letter to the Union about a week later asked that the Union dispatch Underwood for employment "without discrimination as to union or non-union affiliation or other discrimination whatsoever, anything in our collective bargaining agreement to the contrary notwithstanding."

²⁵A finding that the Company, by thus discriminating against Underwood, also violated Section 8 (a) (2) would be in accord with the authorities. Cf *United Hoisting Co., Inc.*, 92 NLRB No. 243. I believe, however, that the finding should not be made. There are two reasons. First, the allegation of the complaint, as amended, that Section 8 (a) (2) was violated by discrimination against Underwood is included within a series of allegations dealing with the 1948 and 1950 agreements and alleged practices of the Respondents thereunder. That an 8 (a) (2) violation was in issue arising specifically out of the treatment accorded Underwood before execution of the 1950 agreement appears to have been lost sight of by counsel and the Examiner in discussions interpreting the amended complaint and motions directed thereto, and counsel may have concluded, as did the Examiner, that such a violation was not in issue. The point was not

ginning with the first vacancy aboard one of its vessels, to fill a vacancy by employing Underwood.²⁶ The theory appears to be that the 1948 agreement having contained an unlawful preference clause, there was an absolute duty upon the Company to disregard the principles of rotary hiring and to employ a radio officer who made direct application to it in preference to a radio officer referred by the Union. On the other hand, the Company asserts that it maintains no facilities for directly hiring

briefed. Second, even if such a finding were to be made, it would not lead me to alter the remedy set out below. This is so because no violation of Section 8 (a) (2) having been alleged in the Pacific Maritime case, the parties thereto were left free to negotiate anew. Specifically, PMA was not directed to withdraw and withhold recognition from the Union. For nearly one year, PMA and the Union have had a lawful contractual arrangement, the 1950 agreement, and I do not believe that at this date it would effectuate the policies of the Act to require that the Company withdraw and withhold recognition because of the discrimination against Underwood prior to execution of that agreement.

²⁶In addition to the vacancies described in footnote 21, there was the position aboard the Palisana which Underwood sought to achieve permanently for himself by his application to the Company, but which was assigned to another radio officer higher on the assignment list before Underwood resigned from the Union. In addition, there were a number of positions aboard other vessels of the Company which were held permanently by men in standby status, who returned to their respective positions when the vessels resumed operation. Those positions, in my judgment, were not vacant positions denied to Underwood.

radio officers, that since 1935 it has utilized the services of the Union and predecessor unions in order to employ such officers, as have other employers in the industry wide unit, and that the provisions of the 1948 agreement embodying rotary hiring were lawful except insofar as preference in employment was given to members of the Union.

I do not believe that the mere existence of the unlawful preference provision of the 1948 agreement obligated the Company to employ Underwood in the first vacancy arising after his application. The preference provision did not result in discrimination against Underwood until the employment of Deyo on May 5, 1950. It was under normal principles of rotary hiring, long an integral part of the Company's hiring practices, that he was denied employment with the Company until that date, and indeed it was precisely those principles to which he objected, and which furnished the basis for his resignation from the Union when he foresaw them as probably precluding such employment because many other radio officers possessed greater shipping seniority. No authority has been cited to support the apparent contention, and I do not perceive, that by resigning from the Union Underwood achieved a preferred status over all others, thereby overcoming his lack of shipping seniority and obligating the Company to hire him.

We turn next to the alleged discrimination against Underwood under the 1950 agreement and applicable shipping rules. As found above, that agreement is not per se unlawful, nor are those shipping rules

per se discriminatory as to non-members. Indeed, the complaint does not allege that those rules are discriminatory, the allegation being erroneously that the earlier rules had been continued in effect. The General Counsel does not contend that after the adoption of those rules and the execution of the 1950 agreement, Underwood sought a place on a national assignment list by the prescribed practice of executing an assignment form. Indeed, it was Underwood's contention that he was entitled to a place at the top of those lists in late 1950 because of his registration on December 1, 1949, after his employment aboard the Palisana terminated. While it is true that Underwood's name had been removed from the lists with the object and result of discriminating against him unlawfully, I do not believe that I can justifiably conclude that there has been an unlawful administration of the 1950 agreement or a misapplication of the existing shipping rules. The most that can be said for the General Counsel's contention is that doubt exists that the Union will abide by those rules where Underwood is concerned. This doubt arises from Lundquist's remark to Underwood that the latter's name did not appear on a national assignment list because he was not a member, and the failure of the Union voluntarily to restore his name to the lists after adoption of the new rules. On the other hand, upon Underwood's return to Seattle from employment in Kake, Alaska, he had his initial communication with the Union after those rules became effective—a telephone conversation with Lundquist in which he said that he

was available for employment within certain limitations. Thereafter, Lundquist placed Underwood's name on the port assignment lists and offered to refer him to employment, although he had not registered therefor under the provisions of the rules.²⁷ The Union asserts that, had he registered, and had he thereafter rejected employment opportunities before compilation of the next national assignment list, he would have been entitled to, and would have received, a place thereon. Underwood chose, however, to rely upon a registration antedating the new rules by about seven months. Under the circumstances, where it appears that other non-members who registered for employment were not treated differently than members, I do not believe that the Union has been put to the test of whether it will treat Underwood differently than a member in the application of the existing shipping rules, and I find that the 1950 agreement has not been adminis-

²⁷A new registration is required after each period of employment in a position requiring use of the radio operator's license, and under the rules it is immaterial whether the employment (1) was achieved through the Union's facilities or by the radio officer's personal efforts, (2) was ashore or afloat, and (3) was with an employer under contract with the Union. This rule was carried over from the earlier rules when only members of the Union were entitled to be placed on assignment lists, and appears to have had its basis in an effort to prevent a member's obtaining employment without notice to the Union and having his name mount on assignment lists as "Active" or "Inactive" when in reality "Employed."

tered so as to result in unlawful discrimination against him.

IV.

The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondents set forth in Section III, C, above, occurring in connection with the operations of the Company described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V.

The Remedy

Having found that the Respondents have engaged in unfair labor practices, I shall recommend that they cease and desist therefrom and that they take certain affirmative action designed to effectuate the policies of the Act. I have found that on May 5, 1950, in filling a vacancy aboard the *Alaska*, the Company discriminated against Underwood in violation of Section 8 (a) (1) and (3) of the Act, and that the Union caused the Company to discriminate against Underwood, thereby violating Section 8 (b) (2) and (1) (A). The position aboard the *Alaska* as second assistant radio officer was a "permanent" one, and the vessel was in service for the period of May 3 to October 14, 1950. On the latter date, the *Alaska* was removed from service and its crew was paid off. I shall recommend that the Company and

the Union, jointly and severally, make whole Underwood for any loss of pay he may have suffered by reason of the discrimination against him by payment to him of a sum of money equal to the amount which he normally would have earned as wages from May 3 to October 14, 1950, inclusive, less his net earnings (Crossett Lumber Company, 8 NLRB 440, 497-8) during said period, the payment to be computed upon a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB No. 41. I shall also recommend, in accordance with the *Woolworth* decision, that the Company, upon request, make available to the Board and its agents all pertinent records. The Company's argument in its brief that Underwood should not be awarded back pay because his unwillingness to accept employment opportunities with other employers amounted to "a wilful incurrence of wage loss" is not persuasive. Within approximately two months after the Respondents' discrimination against Underwood, he accepted employment in *Kake, Alaska*, which continued for about the period that the *Alaska* was in service during 1950.

The next question is whether the Company shall be required to offer Underwood employment aboard the *Alaska*, or a substantially equivalent position. As related, the *Alaska* was removed from service on October 15, 1950. As of February 20, 1951, the vessel had not been returned to service. While the record is not specific on the point, it appears that the *Alaska* was laid up for the winter, rather than

permanently removed from service.²⁸ Under such circumstances, Underwood would have enjoyed the right to stand by the vessel during the period it was laid up, thereby retaining his position.²⁹ It is perhaps questionable that Underwood would have chosen to stand by.³⁰ Whatever doubt there may be

²⁸The Company's practice is to withdraw certain vessels from service at the end of its busy season each year. The Alaska is a passenger vessel which is not operated the year around. It was laid up from October 1, 1949, to May 2, 1950, when it returned to service for the period ending May 14, 1950.

²⁹While the Union for some time has had a rule limiting standbys, under certain circumstances, to maximum periods of 90 days, the rule is not enforced in the Seattle area in instances of vessels which are operated only in the spring and summer seasons. See the next footnote. Counsel for the Union indicated by his questions of a witness that the reason lies partly in the seasonal nature of the Company's business.

³⁰During the period of October 1, 1949, to May 2, 1950, when the Alaska was laid up, two of its radio officers, Dittberner and Johnston, chose to stand by. The third radio officer, Jesse D. Sneff, did not stand by for the entire period, and was succeeded on May 3, 1950, by Deyo. This period was one of slack employment for radio officers, and the record shows that those who held permanent positions aboard desirable vessels made it a practice to stand by when the vessels were laid up in order not to lose the positions. After the Alaska was laid up on October 15, 1950, when employment opportunities had greatly increased following the beginning of hostilities in Korea, Dittberner, Johnston and Deyo gave up their rights to stand by the vessel, as is shown by certain port assignment lists.

should not be resolved in favor of the Respondents, however, because their discrimination against Underwood gave rise to the doubt. I believe, therefore, that the Company should be required to offer Underwood immediate employment in the position of Chief Radio Operator aboard the Alaska, to which position he would have advanced under the Union's shipping rules,³¹ or to a substantially equivalent position,³² without prejudice to his seniority or other rights and privileges. I shall recommend accordingly. I shall also recommend that the

³¹Shipping Rule 13, entitled "Promotions Aboard Ship" is as follows: When a vacancy occurs on a ship upon which more than one Radio Officer is employed, such vacancy shall be filled by promoting the remaining Radio Officer or Radio Officers provided that such Radio Officer is competent and qualified in the judgment [of the] Branch Hiring Hall and has faithfully complied with Hiring Hall rules and policies during the term of his employment on such job. For the purposes of this section, competence shall be deemed to be satisfactory if no provable complaint of unsatisfactory performance of work has been filed with the Union Hiring Halls. Qualification shall be deemed to be satisfactory if the Radio Officer shall possess a requisite grade of Radio Operator license for the job. There shall be no special qualifications instituted by any Branch Hiring Hall which shall conflict in any manner with the terms of this section.

Underwood testified without contradiction, and I find, that he possesses the requisite grade of radio operator's license for the position of Chief Radio Officer on vessels of the Company.

³²See *The Chase National Bank of the City of New York, San Juan, Puerto Rico Branch*, 65 NLRB 827.

Union and the Company, in the manner above provided, make Underwood whole for any additional loss of pay he may have suffered by reason of the discrimination against him by payment to him of a sum of money equal to that which he normally would have earned as wages from the date the Alaska was returned to service after October 15, 1950, to the date of the Company's offer of employment,³³ provided, however, that the Union may terminate its liability for further accrual of back pay to Underwood by notifying the Company, in writing, with a copy of such notification to Underwood, that the Union has no objection to his employment as recommended herein. The Union shall not be liable for back pay accruing after 5 days from the giving of such notice. Absent such notice, the Union shall remain jointly and severally liable with the Company for all back pay that may accrue to Under-

³³Since Underwood was employed aboard the *Pacificus* before the Alaska commenced operations in 1951, there can be no question of wilful loss of earnings for this period. The *Pacificus* is not operated by the Company, but by Coastwise Line, a member company of PMA. In its brief, the Company contends that it should not be required to employ Underwood because he has obtained substantially equivalent employment. I believe, however, that the policies of the Act will best be effectuated by the recommendation of Underwood's employment, regardless of whether Underwood has obtained equivalent employment elsewhere. Atlantic Company, 79 NLRB 820. Moreover, the record does not disclose sufficient facts about the position aboard the *Pacificus* to determine whether it is equivalent to that of Chief Radio Operator aboard the Alaska.

wood until the Company offers him employment as recommended. George W. Reed, 94 NLRB No. 109.

As found above, the 1950 agreement and applicable shipping rules are lawful and non-discriminatory as to non-members of the Union. Their continued observance by the Respondents as to all radio officers, including Underwood, would not be unlawful. Accordingly, nothing herein is intended to exempt Underwood from the requirements of lawful shipping rules and collective labor agreements at the conclusion of such employment as shall be offered to him by the Company as above provided.

In accordance with the Board's practice in factual situations of the nature presented herein, broad cease and desist orders will not be recommended. Carlyle Rubber Co., Inc., 92 NLRB No. 70.

Upon the basis of the above findings of fact and upon the entire record in the case, I make the following:

Conclusions of Law

1. The Union is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Horace W. Underwood, thereby encouraging membership in a labor organization, the Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaran-

ted in Section 7 of the Act, the Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

4. By causing the Company to discriminate against Underwood in violation of Section 8 (a) (3) of the Act, the Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (2) of the Act.

5. By restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, the Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

7. In all respects other than the discrimination against Underwood, the Respondents have not engaged in the unfair labor practices alleged in the complaint as amended.

Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, I hereby recommend that:

1. Alaska Steamship Company, its officers, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Encouraging membership in American Ra-

dio Association, CIO, or in any other labor organization of its employees, by refusing to employ any qualified person or by discriminating in any manner in regard to the tenure of employment or any term or condition of employment of its employees, except to the extent authorized by Section 8 (a) (3) of the Act; and

(2) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities.

(b) Take the following affirmative action which I find will effectuate the policies of the Act:

(1) Offer to Horace W. Underwood immediate employment as Chief Radio Operator aboard the *Alaska*, or in a substantially equivalent position, with all the rights of seniority and other privileges that would have accrued from May 5, 1950, the date of the unlawful discrimination against him, as provided in "The remedy";

(2) Upon request, make available to the Board or its agents for examination and copying all payroll and other records necessary to determine the amount of back pay due under the terms of these Recommendations;

(3) Post in conspicuous places in its office and

places of business in Seattle, Washington, including all places where notices to employees are customarily posted, and in the radio shacks on all vessels owned or operated by it, copies of the notice attached hereto as Appendix A. Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after being duly signed by this Respondent's representative, be posted by it immediately upon receipt thereof, and maintained by it for at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by this Respondent to insure that said notices are not altered, defaced, or covered by any other material; and

(4) File with said Regional Director within twenty (20) days from the receipt of this Intermediate Report and Recommended Order, a report in writing, setting forth in detail the steps which this Respondent has taken to comply herewith.

2. American Radio Association, CIO, its officers, representatives, and agents, shall:

(a) Cease and desist from:

(1) Causing Alaska Steamship Company, its officers, agents, successors, or assigns, to refuse to employ any qualified person or to discriminate in any manner in regard to the tenure of employment or any term or condition of employment of its employees for failure to belong to American Radio Association, CIO, except as authorized by Section 8 (a) (3) of the Act; and

(2) In any like or related manner restraining or coercing employees of Alaska Steamship Company,

its successors or assigns, in the exercise of their rights to engage in, or to refrain from engaging in, any or all of the concerted activities guaranteed in Section 7 of the Act.

(b) Take the following affirmative action, which I find will effectuate the policies of the Act:

(1) Post in conspicuous places in its offices in Seattle, Washington, and wherever notices to its members and other radio officers utilizing its employment facilities are customarily posted, copies of the notice attached hereto as Appendix B. Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after being duly signed by this Respondent's representative, be posted by it immediately upon receipt thereof, and maintained by it for at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by this Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(2) Mail to said Regional Director signed copies of the notice attached hereto as Appendix B, for posting, the Respondent Company willing, at the office and places of business of the Company in Seattle, Washington, in places where notices to employees are customarily posted, and in the radio shacks on all vessels owned or operated by the Company. Copies of said notice, to be furnished by said Regional Director, shall, after being duly signed by this Respondent's representative, be forthwith returned to the Regional Director for such posting; and

(3) File with said Regional Director within twenty (20) days from the receipt of this Intermediate Report and Recommended Order, a report in writing, setting forth in detail the steps which this Respondent has taken to comply herewith.

3. The Respondents, Alaska Steamship Company, its officers, agents, successors, and assigns, and American Radio Association, CIO, its officers, representatives, and agents, shall jointly and severally make whole Horace W. Underwood for any loss of pay he may have suffered by the Respondents' discrimination against him, in the manner described in "The remedy."

It is further recommended that unless each of the Respondents, within twenty (20) days from the receipt of this Intermediate Report and Recommended Order, notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring it to take the action aforesaid.

It is further recommended that the complaint be dismissed insofar as it alleges that the Respondent Company has violated Section 8 (a) (2) of the Act or has engaged in unfair labor practices within the meaning of Section 8 (a) (1) and (3) thereof except by the discrimination against Underwood.

It is further recommended that the complaint be dismissed insofar as it alleges that the Respondent Union has engaged in unfair labor practices within

the meaning of Section 8 (b) (1) (A) and (2) except by the discrimination against Underwood.

Dated this 3rd day of July, 1951.

/s/ A. BRUCE HUNT,
Trial Examiner.

Appendix A

Notice to All Employees

Pursuant to the Recommendations of a
Trial Examiner

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We Will Not encourage membership in American Radio Association, CIO, or in any other labor organization of our employees, by refusing to employ any qualified person or by discriminating in any manner in regard to the tenure of employment or any term or condition of employment or our employees, except to the extent authorized by Section 8 (a) (3) of the Act.

We Will Not in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or

protection, or to refrain from any or all of such activities.

We Will offer to Horace W. Underwood immediate employment as Chief Radio Operator aboard the Alaska, or in a substantially equivalent position, with all the rights of seniority and other privileges that would have accrued to him from the date of our unlawful discrimination against him, and we will make him whole for any loss of pay suffered as a result of the discrimination.

All our employees are free to become or remain, or refrain from becoming or remaining, members of the above-named union or any other labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership or non-membership in any labor organization.

Dated.....

ALASKA STEAMSHIP COMPANY.

(Employer.)

By

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Appendix B

Notice

To All Members of American Radio Association, CIO, to All Other Radio Officers Utilizing the Employment Facilities of This Union, and to All Employees of Alaska Steamship Company:

Pursuant to the Recommendations of a
Trial Examiner

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

We Will Not cause Alaska Steamship Company, its officers, agents, successors, or assigns, to refuse to employ any qualified person or to discriminate in any manner in regard to the tenure of employment or any term or condition of employment of its employees for failure to belong to American Radio Association, CIO, except as authorized by Section 8 (a) (3) of the Act.

We Will Not in any like or related manner restrain or coerce employees of Alaska Steamship Company, its successors or assigns, in the exercise of their rights to engage in, or to refrain from engaging in, any or all of the concerted activities guaranteed in Section 7 of the Act.

We Will make whole Horace W. Underwood for

any loss of pay suffered as a result of our unlawful discrimination against him.

Dated.....

AMERICAN RADIO ASSOCIATION, CIO.

(Labor Organization.)

By

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Before the National Labor Relations Board

[Title of Causes.]

STATEMENT OF EXCEPTIONS OF RESPONDENT ALASKA STEAMSHIP COMPANY TO INTERMEDIATE REPORT AND RECOMMENDED ORDER OF THE TRIAL EXAMINER

Comes now the Respondent Alaska Steamship Company and files this its Statement of Exceptions to the Intermediate Report and Recommended Order of the Trial Examiner in the above-numbered and entitled causes. Reasons and record references in support of the Exceptions are set forth in the Brief in Support of the Statement of Exceptions filed on behalf of this Respondent. Record refer-

ences in said Brief are to pages only because no line 6; and page 20, footnote 23, lines 14-30). copy of the Official Transcript.

This Respondent excepts to the following findings, conclusions, statements, recommendations, rulings and omissions of the Trial Examiner and to all findings, conclusions, statements, and recommendations subsidiary thereto:

1. To the finding that the failure to offer Underwood the assignment on the SS Alaska, filled by Lewis A. Deyo, was discriminatory within the meaning of the Act (I.R., page 16, lines 28-31).

2. To the finding that Underwood was unlawfully denied employment on May 5, 1950 (I.R., page 19, lines 24-25).

3. To the finding that the Union did not restore Underwood's name to the national assignment lists following March 29, 1949 (I.R., page 19, footnote 22, lines 60-61).

4. To the finding that Underwood was or would have been entitled to referral to the SS Alaska ahead of Deyo on May 5, 1950, under the principles of rotary hiring (I.R., page 19, lines 35-40).

5. To the finding that Deyo's number on the union assignment list of January 7 was #815, rather than #793 (I.R., page 19, line 43, to page 20, line designations are contained in the Respondent's

6. To the finding that preference in employment was accorded to members of the Union and resulted

in an unlawful denial of employment to Underwood (I.R., page 20, lines 6-8).

7. To the finding that the Company had knowledge of Underwood's union or non-union affiliation at any time material to the case (I.R., page 20, lines 32-48).

8. To the finding that the company discriminated against Underwood in violation of Section 8(a)(3) and (1) of the Act, and that, by causing the company to do so, the Union violated Sections 8(b)(2) and (1)(A) thereof (I.R., page 20, lines 9-12).

9. To the recommendation that the Respondents cease and desist from engaging in unfair labor practices and take certain affirmative action designed to effectuate the policies of the Act (I.R., page 22, lines 41-44).

10. To the recommendation that the Company and the Union jointly and severally make whole Underwood for any loss of pay he may have suffered by reason of the discrimination against him by payment to him of a sum of money equal to the amount which he normally would have earned from May 3 to October 14, 1950 (I.R., page 22, line 51, to page 23, line 4).

11. To the failure of the Examiner to find and recommend that Underwood should not be awarded back pay because his unwillingness to accept employment opportunities amounted to a wilful incurrence of wage loss (I.R., page 23, lines 9-12).

12. To the recommendation that the Company should be required to offer Underwood immediate

employment in the position of Chief Radio Operator aboard the SS Alaska, or to a substantially equivalent position (I.R., page 23, line 28, to page 24, line 3).

13. To the finding that Underwood would have chosen to stand by the Alaska following October 15, 1950 (I.R., page 23, lines 25-28).

14. To the recommendation that the Union and the Company make Underwood whole for any additional loss of pay he may have suffered by the payment to him of a sum of money equal to that which he normally would have earned as wages from the date the Alaska was returned to service after October 15, 1950, to the date of the Company's offer of employment (I.R., page 24, lines 3-8).

15. To the conclusion that by discriminating in regard to the hire and tenure of employment of Horace W. Underwood, thereby encouraging membership in a labor organization, the Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act (I.R., page 25, lines 13-16, Conclusion of Law No. 2).

16. To the conclusion that by interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act (I.R., page 25, lines 18-21, Conclusion of Law No. 3).

17. To the conclusion that by causing the Com-

pany to discriminate against Underwood in violation of Section 8(a)(3) of the Act, the Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(2) of the Act (I.R., page 25, lines 23-26, Conclusion of Law No. 4).

18. To the conclusion that by restraining and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, the Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act (I.R., page 25, lines 28-32, Conclusion of Law No. 5).

19. To each and every recommendation of the Trial Examiner except the recommendations that the complaint be dismissed as to both the Company and the Union insofar as it alleges unfair labor practices other than discrimination against Underwood (I.R., page 25, line 44, to page 27, line 26.)

20. To the failure of the Examiner to recommend and order that back pay, if any, be assessed solely against the Union.

Dated at Seattle, Washington, this 7th day of August, 1951.

Respectfully submitted,

BOGLE, BOGLE & GATES,

By /s/ J. TYLER HULL,

Attorneys for Respondent,

Alaska Steamship Company.

Certificate of mailing attached.

Received August 9, 1951.

Before the National Labor
Relations Board

[Title of Causes.]

STATEMENT OF EXCEPTIONS OF RESPONDENT AMERICAN RADIO ASSOCIATION, CIO, TO INTERMEDIATE REPORT AND RECOMMENDED ORDER OF THE TRIAL EXAMINER

Comes now the Respondent American Radio Association, CIO, and files this, its Statement of Exceptions to the Intermediate Report and Recommended Order of the Trial Examiner in the above-numbered and entitled causes. Reasons in support of the Exceptions are set forth in the Brief filed simultaneously herewith.

Exception is taken to the following findings, conclusions, statements, recommendations, rulings and omissions of the Trial Examiner and to all findings, conclusions, statements, and recommendations subsidiary thereto:

Nature of Exceptions

I.

As to the "Findings of Fact"

1. To the finding that the record does not disclose whether radio officers assigned to vessels after the execution of the 1950 agreement, or other radio officers assigned to positions aboard vessels of the Company were required to be members of the Union as a condition of employment aboard such vessels.

2. To the failure to find that Underwood limited his availability to employment in the industry based

upon job availability and seniority only with and confined to the Alaska Steamship Company.

3. To the failure to find that Underwood's name being numbered 828 on the assignment list of December 31, 1949, and number 796 on the list of January 7, 1950, were related numbers of standing on said lists unconnected with Underwood's membership or non-membership in the Union.

4. In failing to find that Underwood's name was removed from the lists because he preferred to seek employment through other channels.

5. In finding that Underwood's name had been discriminately stricken from the assignment lists of December 31, 1949, and January 7, 1950.

6. In finding that Miller, the Union's Port Agent, conditioned the offer of a job to Underwood aboard the "Flemish Knot" with the requirement that Underwood withdraw a certain charge filed by him with the Board against the Union.

7. In creating the implication that the April 19th letter sent by Miller for the Union to the Company was a recognition that Underwood's claim of discrimination warranted any implication of discrimination.

8. To the finding that the failure to offer Underwood the assignment on the SS "Alaska" filled by Lewis A. Deyo was discriminatory within the meaning of the Act.

9. To the finding that Respondents unlawfully discriminated against Underwood on May 5, 1950,

in the failure to offer him an assignment aboard the SS "Alaska."

10. To the finding that Lundquist for the Union told Underwood that his name did not appear on the national assignment lists because he was not a Union member.

11. In failing to find that the Union offered and Underwood accepted an assignment to a permanent position aboard the SS "Pacificus" at the first moment after Underwood removed the limitations and restrictions as to the kind of job he would accept, which evidenced the absence of any discrimination imposed upon him by the Union.

II.

As to "Conclusion Concerning Underwood"

12. To the finding that Underwood was unlawfully denied employment on May 5, 1950.

13. To the finding that the Union did not restore Underwood's name to the national assignment lists following March 29, 1949.

14. To the finding that Underwood was or would have been entitled to referral to the SS Alaska ahead of Deyo on May 5, 1950, under the principles of rotary hiring.

15. To the finding that Deyo's number on the Union assignment list of January 7 was #815, rather than 793.

16. To the finding that preference in employment was accorded to members of the Union and

resulted in an unlawful denial of employment to Underwood.

17. To the finding that the Company had knowledge of Underwood's union or non-union affiliation at any time material to the case.

18. To the finding that the Company discriminated against Underwood in violation of Section 8(a)(3) and (1) of the Act, and that, by causing the Company to do so, the Union violated Sections 8(b)(2) and (1)(A) thereof.

III.

As to the "Remedy"

19. To the recommendation that the Respondents cease and desist from engaging in unfair labor practices and take certain affirmative action designed to effectuate the policies of the Act.

20. To the recommendation that the Company and the Union jointly and severally make whole Underwood for any loss of pay he may have suffered by reason of the discrimination against him by payment to him of a sum of money equal to the amount which he normally would have earned from May 3 to October 14, 1950.

21. To the failure of the Examiner to find and recommend that Underwood should not be awarded back pay because his unwillingness to accept employment opportunities amounted to a wilful incurrence of wage loss.

22. To the recommendation that the Company should be required to offer Underwood immediate

employment in the position of Chief Radio Operator aboard the SS Alaska, or to a substantially equivalent position.

23. To the finding that Underwood would have chosen to stand by the Alaska following October 15, 1950.

24. To the recommendation that the Union and the Company make Underwood whole for any additional loss of pay he may have suffered by the payment to him of a sum of money equal to that which he normally would have earned as wages from the date the Alaska was returned to service after October 15, 1950, to the date of the Company's offer of employment.

IV.

As to the "Conclusions of Law"

25. To all of the conclusions of law numbered 2 to 6, inclusive.

V.

As to "Recommendations"

26. To each and every recommendation of the Trial Examiner, except his recommendations that the complaint be dismissed as to both the Company and the Union insofar as said complaint alleges unfair labor practices other than discrimination against Underwood (no exception is taken to the recommendation of the Trial Examiner contained on page 27, lines 29 to 38).

The Respondent Union further takes exception:

27. To the failure to find that there is no evidence that the Respondent Union had any animus

toward Underwood or that it was in any way hostile to him.

Dated: San Francisco, California, August 18, 1951.

Respectfully submitted,

/s/ JAY A. DARWIN,

Attorney for Respondent
Union.

Certificate of mailing attached.

Received August 20, 1951.

United States of America
Before the National Labor Relations Board

Cases Nos. 19-CA-277 and 19-CA-358

In the Matter of
ALASKA STEAMSHIP COMPANY,
Employer,
and
HORACE W. UNDERWOOD,
an Individual.

Cases Nos. 19-CB-90 and 19-CB-135

In the Matter of
AMERICAN RADIO ASSOCIATION, CIO,
and
HORACE W. UNDERWOOD,
an Individual.

DECISION AND ORDER

On July 3, 1951, Trial Examiner A. Bruce Hunt issued his Intermediate Report in the above-entitled

proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner further found that Respondent had not engaged in other unfair labor practices alleged in the complaint and recommended that the complaint be dismissed as to them.¹ Thereafter, the charging party and the Respondents filed exceptions to the Intermediate Report and supporting briefs.

The Board² has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs filed by the parties, and the entire record in the case, and hereby adopts the findings,³ conclusions, and recommendations of the

¹As no exception has been filed to this recommendation, we shall dismiss the allegations in the complaint relating to these unfair labor practices.

²Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel.

³The Intermediate Report contains two inadvertent inaccuracies. It states that "Beginning with April 1, 1950, soon after his latest membership in the Union, Underwood wrote a series of letters to it * * *" The correct date is April 1, 1949. At a later point the Intermediate Report states that "[The Alaska] was laid up from October 1, 1949, to May 2, 1950, when it returned to service for the period ending May 14, 1950." The last date should be October 14, 1950.

Trial Examiner, with the modifications noted below.

1. The Trial Examiner apparently found the effective date of the discrimination against Underwood to be May 5, 1950, the date Underwood was not offered the position of radio officer on the ship Alaska. This resulted, as found by the Trial Examiner, from Underwood's name being discriminatorily stricken from the national assignment list of the Respondent Union. We find that the act of removing Underwood's name from the assignment list in itself constituted discrimination in violation of 8 (a) (1) and (3) of the Act by the Respondent Employer and Section 8 (b) (1) (A) and (2) of the Act by the Respondent Union. However, we agree with the Trial Examiner in his finding that Underwood was also discriminated against on May 5, 1950, and in his setting that date as the date from which Underwood's right to back pay shall run.

2. The Alaska operated from May 5, 1950, to October 14, 1950, at which latter date it was laid up for the winter season. At that time, had Underwood been employed on the ship as radio officer, as it has been found he should have been, he would have been entitled, according to the rules of the Respondent Union, to "stand by" the ship, retaining his right to the radio officer's position when it resumed operation. Or he could have relinquished his position and presumably had his name restored to the Union's assignment lists. The Trial Examiner found that Underwood would have elected to stand by the Alaska and would therefore have had the right to return to it when the ship went back into

operation in the Spring of 1951. The Trial Examiner further found that through the operation of the rules of the Union, Underwood would have automatically have been promoted to the position of Chief Radio Operator on the Alaska. He therefore recommended that the Respondent Company be required to offer Underwood that position or a substantially equivalent one. In our opinion, a finding that Underwood would have attained the position of Chief Radio Operator involves too much speculation as to a series of contingent events to be a proper finding for us to make. We will therefore order that the Respondent Company offer Underwood the position of radio officer aboard the vessel Alaska, or a substantially equivalent position. We do not intend by this modification, however, to change in any way the Trial Examiner's recommendations as to the back pay due Underwood, except to the extent of any differential between the wage rates of a radio officer and a Chief Radio Operator.

ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that:

1. Alaska Steamship Company, its officers, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Encouraging membership in American Radio Association, CIO, or in any other labor organi-

zation of its employees, by refusing to employ any qualified person because he is not a member of this organization or by discriminating in any manner in regard to the tenure of employment or any term or condition of employment of its employees, for this reason, except to the extent authorized by Section 8 (a) (3) of the Act; and

(2) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities.

(b) Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(1) Offer to Horace W. Underwood immediate employment as radio officer aboard the Alaska, or in a substantially equivalent position, with all the rights of seniority and other privileges that would have accrued from May 5, 1950, the date of the unlawful discrimination against him, in the manner provided in the Intermediate Report.

(2) Upon request, make available to the Board or its agents for examination and copying all payroll and other records necessary to determine the amount of back pay due under the terms of this Order;

(3) Post in conspicuous places in its office and places of business in Seattle, Washington, including all places where notices to employees are customarily posted, and in the radio shacks on all vessels owned or operated by it, copies of the notice attached to the Intermediate Report and marked "Appendix A."⁴ Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after being duly signed by this Respondent's representative, be posted by it immediately upon receipt thereof, and maintained by it for at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by this Respondent to insure that said notices are not altered, defaced, or covered by any other material; and

(4) Notify the Regional Director for the Nineteenth Region in writing, within ten (10) days from the date of this Order, what steps the Respondent Company has taken to comply herewith.

2. American Radio Association, CIO, its officers, representatives, agents, successors and assigns, shall:

(a) Cease and desist from:

(1) Causing Alaska Steamship Company, its

⁴This notice, however, shall be, and it hereby is amended by striking from line 3 thereof the words "The Recommendations of a Trial Examiner" and substituting in lieu thereof the words "A Decision and Order." In the event that this order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

officers, agents, successors, or assigns, to refuse to employ any qualified person or to discriminate in any manner in regard to the tenure of employment or any term or condition of employment of its employees for failure to belong to American Radio Association, CIO, except as authorized by Section 8 (a) (3) of the Act; and

(2) In any like or related manner restraining or coercing employees of Alaska Steamship Company, its successors or assigns, in the exercise of their rights to engage in, or to refrain from engaging in, any or all of the concerted activities guaranteed in Section 7 of the Act.

(b) Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) At an appropriate time and upon his request and proper application, restore Horace W. Underwood to its assignment lists in conformance with its rules, and refer him to assignments in accord with his proper place on those lists and without discrimination in any manner, except as authorized by Section 8 (a) (3) of the Act;

(2) Post in conspicuous places in its offices in Seattle, Washington, and wherever notices to its members and other radio officers utilizing its employment facilities are customarily posted, copies of the notice attached to the Intermediate Report and marked "Appendix B."⁵ Copies of said notice to

⁵See footnote 4.

be furnished by the Regional Director for the Nineteenth Region, shall, after being duly signed by this Respondent's representative, be posted by it immediately upon receipt thereof, and maintained by it for at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by this Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(3) Mail to said Regional Director signed copies of the notice attached to the Intermediate Report and marked "Appendix B," for posting, the Respondent Company willing, at the office and places of business of the Company in Seattle, Washington, in places where notices to employees are customarily posted, and in the radio shacks on all vessels owned or operated by the Company. Copies of said notice, to be furnished by said Regional Director, shall, after being duly signed by this Respondent's representative, be forthwith returned to the Regional Director for such posting; and

(4) Notify the Regional Director for the Region in writing, within ten (10) days from the date of this Order, what steps the Respondent union has taken to comply herewith.

3. The Respondents, Alaska Steamship Company, its officers, agents, successors, and assigns, and American Radio Association, CIO, its officers, representatives, agents, successors, and assigns, shall jointly and severally make whole Horace W. Underwood for any loss of pay he may have suffered by the Respondents' discrimination against him, in the manner described in the Intermediate Report.

It Is Further Ordered that the complaint be dismissed insofar as it alleges that the Respondent Company has violated Section 8 (a) (2) of the Act or has engaged in unfair labor practices within the meaning of Section 8 (a) (1) and (3) thereof except by the discrimination against Underwood.

It Is Further Ordered that the complaint be dismissed insofar as it alleges that the Respondent Union has engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) and (2) except by the discrimination against Underwood.

Signed at Washington, D. C., February 11, 1952.

JOHN M. HOUSTON,
Member;

ABE MURDOCK,
Member;

PAUL L. STYLES,
Member,

[Seal]

NATIONAL LABOR RELATIONS BOARD.

Before the National Labor Relations Board,
Nineteenth Region

Case Nos. 19-CA-277 and 19-CA-358

In the Matter of:

ALASKA STEAMSHIP COMPANY

and

HORACE W. UNDERWOOD (an Individual).

Case Nos. 19-CB-90 and 10-CB-135

AMERICAN RADIO ASSOCIATION, CIO,

and

HORACE W. UNDERWOOD (an Individual).

PROCEEDINGS

Pursuant to notice the above-entitled matter came on regularly for hearing at the hour of 10:00 o'clock a.m.

Before: A. Bruce Hunt, Trial Examiner.

Appearances:

SANFJORD B. TEU, II,
National Labor Relations Board,
Washington, D. C.,

Appearing for the General Counsel of
the Board.

JOHN GEISNESS, of
BASSETT & GEISNESS,

Appearing for Charging Party, Horace W.
Underwood.

J. TYLER HULL, of
BOGLE, BOGLE & GATES,

Appearing for Respondent Alaska Steam-
ship Co.

JAY A. DARWIN,

Appearing for Respondent American Radio
Association, CIO.

* * *

Monday, February 26, 1951

DALLAS HUGHES

called as a witness on behalf of the General Counsel,
having been first duly sworn, was examined and
testified as follows: [56*]

* * *

Cross-Examination

By Mr. Darwin:

Q. Mr. Hughes, you heard Mr. Underwood tell
Mr. Lundquist that he was now available for per-
manent or temporary assignment on the Alaska
Steam, did you not? A. Yes.

Q. And it is a fact that Mr. Underwood said,

*Page numbering appearing at top of page of original Reporter's
Transcript of Record.

(Testimony of Dallas Hughes.)

“Yes, from now on I am available for temporary work.” That is correct, [65] isn’t it?

A. I believe that is correct.

Q. Were you there during all the time that Mr. Underwood was talking to Mr. Lundquist?

A. I am pretty sure I was there during the entire conversation.

Q. By the way, your status for some time has been non-membership in this union, too, hasn’t it?

A. Yes, sir.

Q. It is a fact, isn’t it, Mr. Hughes, that you have sailed on three vessels by assignment through this Seattle port, between August 8, 1950, and the present date—isn’t that right?

A. Yes, that is true. [66]

* * *

Q. (By Mr. Darwin): Do you know that in addition to the national list which the ARA promulgates each week, we have also port lists, do we not? A. Yes, sir.

Q. And you knew also that you were on the port list, did you not?

A. I understood that I was on the port list, yes.

Q. You knew also that this Underwood was on the port list, did you not? A. Yes. [67]

* * *

Q. (By Mr. Darwin): Now, when you came to the union hall for a position as a non-member, did you register?

A. I understood that I was registered, yes. [71]

(Testimony of Dallas Hughes.)

* * *

Q. And you were sent out on a vessel on or about that date through the hiring hall?

A. Yes, sir.

Q. Now, you are familiar with the application—employment application blanks which are referred to as official assignment cards? A. Yes.

Q. That you have to fill out? A. Yes. [72]

* * *

Q. Now, on August 3, 1950; September 29, November 16, and December 9, 1950, and February 21, 1951, you were so assigned to ships, weren't you, by following that system? [73]

* * *

A. Yes. [75]

* * *

HORACE W. UNDERWOOD

the charging party, called as a witness on behalf of the General Counsel, having been first duly sworn, was examined and testified as follows: [88]

* * *

Direct Examination

By Mr. Teu:

Q. What is your occupation, Mr. Underwood?

A. Radio operator.

Q. How long have you been a radio operator?

A. Since 1914.

Q. 1914? A. Yes.

(Testimony of Horace W. Underwood.)

Q. Are you a licensed operator?

A. Pardon?

Q. Are you a licensed radio operator?

A. Yes, sir; that is correct.

Q. By whom are you licensed?

A. By the Federal Communications, and by the United States Coast Guard.

Q. How long have you held an F.C.C. license?

A. Since 1914.

Q. How long have you held a United States Coast Guard certificate?

A. I believe it has been since 1948—isn't that right, Carl? [89]

* * *

Q. Are you now or have you ever been a member of ARA?

A. I have been a member of ARA. I resigned in November of 1949.

* * *

Q. (By Mr. Teu): What were the circumstances under which you resigned?

A. Well, after one year's time, I was not able to have anything but bad luck. My employment seemed to be just the way that you spin a roulette wheel. I waited five months on the beach to get an Alaska steamship, and then I was assigned to the Coastal Rambler, which normally would run all summer—— [93]

* * *

Q. (By Mr. Teu): Go ahead.

(Testimony of Horace W. Underwood.)

A. Then suddenly after four months' work this ship was laid up with cargo on the dock marked for the Coastal Rambler, and I asked the skipper and numerous ship heads why. It didn't make sense to me.

And they said because of the four months' time agreement with the Maritime Commission, they would have to charter the ship for four months more, and probably they would only need it for two months more, and they didn't want to charter it for four months, when they only would need it for two months. [94]

* * *

A. Well, I was not allowed to stand by this ship—this Coastal Rambler, although I can prove that I intended—I was not allowed to stand by because I applied for unemployment insurance and they said that I could not. So I had to sign off there for drawing this government unemployment insurance. And that is when I wrote to O'Rourke asking him what I could do about it.

* * *

Q. My question was, under what circumstances did you resign from the A.R.A.? [95]

A. Well, that was the start of it.

Q. Go ahead.

A. Then when I lost the Coastal Rambler, they asked me to take a relief job on the Palisana—

Q. (Interposing): I want to ask this question here, and then resume your narrative.

(Testimony of Horace W. Underwood.)

Were you on the Seattle branch seaman list at this particular time?

A. I was. I was number eleven on the local list.

Q. Were you on the national list?

A. I don't remember my exact national list number, but on the local list I was No. 11

Q. Were you on the national list?

A. Yes, sir.

Q. Go ahead and tell us the circumstances.

Mr. Darwin: Do we have the date fixed?

The Witness: Yes.

Mr. Darwin: For the Coastal Rambler?

Trial Examiner Hunt: You were No. 11 on the local list, you say?

The Witness: At the time that I accepted a job on the Palisana.

Trial Examiner Hunt: What was the date of that?

The Witness: The date of that was September 11th. I have my government book here, which shows that. [96]

* * *

Trial Examiner Hunt: The witness has produced a book which bears a number underneath his name on the front cover, and also the seal of the Department of Commerce. The book is entitled, "Continuous Discharge Book," and the witness is referring to an entry MS Coastal Rambler, and the date is 2 April 1949, Seattle, Washington.

There are two more entries immediately below involving the same ship, the entries being one of May 4, 1949, and another of June 1, 1949.

(Testimony of Horace W. Underwood.)

And then there are two Palisana entries immediately below that, which conclude the entries in this book, and they are [97] dated September 11, 1949, and October 21, 1949.

* * *

Q. (By Mr. Teu): Go ahead.

A. They asked me to accept that job on the Palisana, and I said, "Well, you offer it to everybody in the hall, and if no one accepts it, I will relieve this fellow." I didn't accept that until every man in the hall refused to relieve this man. He had to go to the hospital, and he was going to lose his license. He would have to take his examination again.

I made two trips on it, and the old bylaws used to read that when a man placed his name on that list, that job goes to that man; but then the men didn't even know that [98] under the new bylaws—

Trial Examiner Hunt (Interposing): Just wait a minute. You have a tendency to give us a very wide answer covering every detail, and if counsel want details, they will ask you for them.

You are asked now to give us your testimony of the circumstances concerning your resignation from the ARA.

The Witness: That is it. My indignation over the treatment that I was getting in the ARA was gradually building up all the time to the point where I got so mad that I resigned. [99]

* * *

(Testimony of Horace W. Underwood.)

Trial Examiner Hunt (Interposing): Wait just a minute.

You took two assignments on the Palisana?

The Witness: Two voyages.

I signed articles for each voyage.

Trial Examiner Hunt: The first one was from September 11th to October 29, 1949?

The Witness: Yes, sir.

Trial Examiner Hunt: And the second from October 21 to November 21, 1949, according to this book that you have produced?

The Witness: That is right.

Trial Examiner Hunt: Your point is that the rules were changed so that the radio operator or officer, whom you relieved on those voyages, when he could not get back to the ship—

The Witness: That is right.

Trial Examiner Hunt: —to maintain his position as a permanent one, you thought that it should have been given to you as a permanent one? [100]

The Witness: Yes.

Trial Examiner Hunt: But because of some change in rules, you could not obtain it as a permanent one?

The Witness: That is right.

Trial Examiner Hunt: And you felt aggrieved because for each week that you were on this ship on these two voyages your place on the assignment list dropped 30 positions?

The Witness: Each week. It dropped so far down that without the Korean war I would not have

(Testimony of Horace W. Underwood.)

been employed on the Alaska ships until this spring of 1951.

Trial Examiner Hunt: Is there anything else in connection with your grievances against the union which caused you to resign?

The Witness: That is the main thing.

Trial Examiner Hunt: All right, sir.

Q. (By Mr. Teu): Now, you resigned, I believe you said in December of 1949 from the ARA, is that right? A. That is correct. [101]

* * *

Q. And you had no work insofar as the ARA is concerned since the last voyage on the Palisana, is that correct?

A. Well, he offered me this assignment that Dallas Hughes is on now—that relief job.

Q. When did he offer that?

Trial Examiner Hunt: When the witness says, “he offered me,” he pointed to whom?

The Witness: Carl Lundquist.

Trial Examiner Hunt: All right.

Q. (By Mr. Teu): When did he offer you that assignment?

A. Well, just let me see now. I have the telegram here.

Q. Refer to it and refresh your memory.

A. I believe this is it (indicating).

Q. When did he offer you the assignment on the China Mail, the ship which Mr. Hughes is on?

A. It is dated February 19, 1951. [105]

Q. At that time had you received a notice of this hearing? A. Yes, sir; I had.

(Testimony of Horace W. Underwood.)

Q. Were you under subpoena at that time to appear at this hearing?

A. You told me that I would be subpoenaed. I am not sure whether you had actually given me a subpoena or not. But you said that I could consider myself under a subpoena.

Q. You were advised that you would be subpoenaed? A. Yes, sir.

Trial Examiner Hunt: Let us get this clear. I don't suppose there will be any objection by other counsel to stating for the record that the witness has produced a telegram addressed to the witness, reading as follows:

“Expect Coastwise Relief Trip About 12 Days. Available Tomorrow or Wednesday. Advise if Interested.”

And that is signed, “Lundquist.”

The telegram is dated February 19, and bears the notation that it was read to the addressee on the morning of February 19, 1951.

And that telegram was sent by Mr. Lundquist—is that correct?

Mr. Darwin: Yes. We are going to offer it in evidence at the proper time.

Q. (By Mr. Teu): Did you refuse that offer?

A. I explained to Carl that I would have to come to this [106] hearing, and if he could not locate anyone, I would locate him one.

Q. Is that the only assignment or offer that was made to you from 1949 until this offer was made?

A. No. He offered me a job available in the Mili-

(Testimony of Horace W. Underwood.)

tary Sea Transport Service. Of course he doesn't have a contract there, and they do not have anything to do with those jobs. Anybody can go down there and apply for that job.

Q. With respect to the jobs that the ARA has anything to do with, has the ARA offered you an assignment from 1949 until the time of the telegram that was just read into the record by the Trial Examiner? A. Ralph Miller called me up—

Q. Who was he?

A. He was the predecessor of Mr. Lundquist. He was the business agent before Mr. Lundquist.

Mr. Darwin: Port agent.

Trial Examiner Hunt: Mr. Lundquist, when did you assume your duties as port agent?

Mr. Lundquist: September 13, 1950.

Trial Examiner Hunt: And he was port agent prior to that time?

Mr. Lundquist: Yes, sir.

Trial Examiner Hunt: Now, you may proceed.

The Witness: Ralph Miller offered me a job on a Northwest [107] Airlines plane.

It required 80 hours flying time. I have no flying time. I have experience with airplane transmitters, but I have no flying time.

Q. Does the ARA have anything to do with the assignment of radio operators to airplanes?

A. No.

Q. Has the ARA since 1949—the last assignment that you had—until the assignment that you

(Testimony of Horace W. Underwood.)

had in this telegram, offered you an assignment on a ship?

A. None other than the one I just told you about.

Q. Had they offered you an assignment on any ship during that period?

A. It may have been possible that Ralph Miller offered me a temporary job on the Baranof—just 12 days.

Q. You say that it may have been possible?

A. I am not sure; he may have called me. Of course I told him that I would not accept, because accepting a relief job means that you are out of luck for getting a permanent job. Your name goes down 30 places each week, and with the large beach list, you are always behind the eight-ball.

Q. Would you have refused a job had you been offered one?

A. I never would refuse an offer of a permanent job with the Alaska Steam.

Q. Can you refuse an assignment by the ARA if you want to? [108]

A. Yes. Any man in the ARA has that privilege. He can turn down all of them and he can hang on to his place on the list for an indefinite period.

Q. Were you available for an assignment during the period of 1949 until the date of the telegram which has just been referred to in the record?

A. Yes. Even while I was at the cannery, the superintendent would have let me leave if I could get a permanent job with the Alaska Steam, because they had another radio man there—in fact, two of them.

(Testimony of Horace W. Underwood.)

Q. Where were you working in Alaska?

A. Kake, Alaska.

Q. Was there any means by which the ARA could advise you of an assignment that was available? A. Yes. [109]

* * *

Trial Examiner Hunt: General Counsel's 2, 3 and 4 are received in evidence.

(General Counsel's Exhibits Nos. 2, 3 and 4 are received in evidence.) [160]

* * *

We will now recess until March 26, 1951, in this hearing room, at 9:30 o'clock a.m.

(Whereupon at 3:15 o'clock p.m. on February 27, 1951, the hearing was adjourned until 9:30 o'clock a.m. March 26, 1951, at the same [166] place.)

* * *

Mr. Hull: Mr. Examiner, there are two things you neglected to do, I think, at the close of the hearing last time. I will be very brief, but I would like it understood, and I now so move, that the answer of respondent Alaska Steamship Company in this case be deemed amended to deny the allegations of the amended complaint.

Trial Examiner Hunt: I assume there will be no objection to that motion, and I grant it. [177]

* * *

LEONARD C. WESSON

recalled as a witness on behalf of the General Counsel, having been sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Teu:

Q. Where are you employed?

A. By the Alaska Steamship Company.

Q. What are your duties there?

A. I am the Chief Clerk in the Operating Department, and as such I do general work in that office, including the maintenance and supervision of employment practices for the seamen employed by the Alaska Steamship Company. [183]

* * *

Q. Mr. Wesson, you agreed to produce at the hearing certain documents which I requested you to produce, is that right?

* * *

Q. Will you produce them, please?

(Mr. Hull hands documents to witness.)

A. Mr. Teu asked that we provide an abstract of the employment record of each radio operator employed on each of our vessels, or each vessel operated by the Alaska Steamship Company, commencing with the period of October 1, 1949, to the date he called me, a date of February—

Q. Around the 20th of February, I believe?

A. February 20, 1951.

(Testimony of Leonard C. Wesson.)

Mr. Teu: Mr. Examiner, I would like to have this document which I hand the reporter marked for identification as GC Exhibit 7.

(Document above referred to marked for identification as General Counsel's Exhibit No. 7.)

Q. Mr. Wesson, the document marked for identification GC Exhibit 7 is what? Describe it briefly. [184]

A. This is an abstract of the employment record of radio operators on board each of our vessels or each vessel owned or operated by the Alaska Steamship Company during the period October 1, 1949, through the period to that date in February on which we agreed as approximately [185] February 20.

* * *

(Document heretofore marked General Counsel's Exhibit No. 7 for identification, received in evidence.) [187]

* * *

Cross-Examination

By Mr. Hull:

* * *

Mr. Teu: Pardon me. I have just one question I would like to ask before you take up your cross-examination, if I may? [188]

* * *

Mr. Teu: Do you know if all the radio operators,

(Testimony of Leonard C. Wesson.)

that is, the Chief, First Assistant and Second Assistant, whose names appear on GC Exhibit 7 are members of the ARA?

The Witness: No.

Mr. Teu: You don't know, or you know they are or are not?

The Witness: I don't know.

Q. (By Mr. Hull): Mr. Wesson, in connection with this exhibit, first of all, with respect to the SS Alaska, which appears on the first page of the exhibit, I notice that the first voyage, Voyage No. 21, was on May 6, 1950, but there is no previous voyage in 1949 listed for the Alaska.

Now, will you explain why that is?

A. The SS Alaska was laid up on October 1, 1949. Mr. Teu in his request requested this record reflect information commencing on October 1, 1949. However, the information for the last voyage in 1949 I have available.

Q. Yes; I wonder if it would give it to us for that voyage?

A. The SS Alaska sailed on its last voyage in 1949 on September 14, 1949. The payroll for the period September 12, 1949, to and including September 30, 1949, carried as Chief Radio Operator the man named Albert F. Dittberner; the First Assistant Operator was George D. Johnston; the second [189] Assistant Radio Operator was Jesse D. Sneff.

Q. Mr. Wesson, you said the SS Alaska laid up

(Testimony of Leonard C. Wesson.)

following October 1, 1949. What did you mean by that?

A. Certain vessels are withdrawn from service each year after termination of what we call our busy season, which is the season of passenger and tourist traffic, and the heavy movement of salmon from Alaska.

Q. And by "laid up" do you mean the vessel was in an inactive status?

A. Yes, she was completely shut down with no crew aboard, and only watchmen stationed on board the ship. [190]

* * *

Q. Does the Alaska Steamship Company operate all its passenger and freight vessels throughout the year? A. No.

Q. Will you describe the operation of those vessels a little bit?

A. The Alaska Steamship Company operates two passenger vessels the year around. The remainder of the fleet is kept in reserve and operated either as fill-ins during that period or to accommodate the tourists and passenger business in the summer season. [201]

Cross-Examination

By Mr. Darwin:

* * *

Q. When a man is on standby, you normally don't call into the union hall for any replacement for that vessel when it sails again?

(Testimony of Leonard C. Wesson.)

A. If the man is on employed status, we assume the employment is continuing unless he advises us to the contrary.

Q. That is right. Unless he advises you to the contrary, there is no occasion for a telephone call to the union employment office for [203] replacement? A. That is correct.

Mr. Hunt: Let's see. I think I know what you are driving at. Take the first page of the exhibit again.

In other words, from the date of May 3, 1950, to October 14, 1950, in connection with the SS Alaska, there is no occasion for the company to contact the union with respect to getting a radio operator?

The Witness: That is correct.

Q. (By Mr. Darwin): And that would generally and similarly be true with respect to General Counsel's Exhibit 7 as to radio operators aboard other vessels—that is correct, isn't it?

A. Yes.

* * *

Redirect Examination

By Mr. Teu:

Q. With respect to the terms you used on cross-examination, Mr. Wesson, "Alaska trade" and "ocean trade" or "offshore trade"—I am not sure what—I am not sure I understand what you mean. Is this true, that offshore is the coast-wise trade?

Mr. Darwin: Oh, no.

(Testimony of Leonard C. Wesson.)

A. The Alaska Steamship Company is a steamship company engaged primarily in transporting passengers and cargo by ships between the United States and Alaska—from the [204] continental United States to Alaska or between different ports in Alaska or between Alaska and the United States.

Q. That is not coast-wise trade?

A. No, sir.

Q. Is that ocean trade?

A. I might inject here to clarify what has actually occurred. The fact is that the Alaska trade is a seasonal trade, and at certain times we find ourselves with a surplus of ships. Then we have the option of either laying the ships up or finding employment for the ships in other trades than the Alaska trade. These vessels that are employed in the offshore trade are the ships that might be referred to or which can be designated as our surplus, and would be either laid up or employed in this other trade.

Trial Examiner Hunt: The term “Alaska trade” has reference to business between the continental United States and points in Alaska or points in Alaska to the United States, vice versa?

The Witness: That is right. [205]

* * *

HORACE W. UNDERWOOD

a witness called on behalf of General Counsel, having been previously sworn, was recalled and testified further as follows: [209]

Direct Examination

By Mr. Teu:

* * *

Q. Mr. Underwood, did you on or about December 23, 1949, make application to the Alaska Steamship Company for employment?

A. Yes, I did.

Q. How did you make application for employment? A. I wrote a letter to Mr. Felton.

Q. Who is Mr. Felton?

A. Mr. Felton is Port Engineer for the Alaska Steamship [210] Company, and he has charge of radio operators also.

Q. Did you make a copy of the letter in which you made application to Mr. Felton for a job with the Alaska Steamship Company?

A. Yes, I do.

Mr. Teu: Mr. Examiner, I would like to have this document marked as GC Exhibit 8 for identification.

* * *

Mr. Darwin: I object to its introduction on the ground that it is self-serving and contains the writer's conclusions as to the legality or illegality of the bylaws. This is the first time I have seen any claim about the ARA's bylaws being illegal.

Trial Examiner Hunt: Let us see what the pur-

(Testimony of Horace W. Underwood.)

pose of the offer is. It might be that your objection is premature. Do you just want to show he made application to the company for employment?

Mr. Teu: Right. And I certainly can trust the Examiner to separate the wheat from the chaff, if any, in this letter. The purpose is to show he made application for a job with the Alaska Steamship Company. [211]

Trial Examiner Hunt: I think it is admissible for that purpose, Mr. Darwin.

Mr. Darwin: Limited to that, all right.

Mr. Hull: I object to the document on the ground that it is immaterial and irrelevant to any issue in the case, and I join in Mr. Darwin's objection. I understand that the Examiner has limited the purpose of the offer to the matter stated.

Trial Examiner Hunt: I think Mr. Teu himself limited it.

Mr. Teu: I specifically limited it.

Trial Examiner Hunt: Have you offered it?

Mr. Teu: It has not been identified yet. I offer it as GC Exhibit No. 8.

* * *

Trial Examiner Hunt: I will receive it in evidence as General Counsel's Exhibit 8. Do you have a duplicate?

Mr. Teu: I will have some duplicates made.

Trial Examiner Hunt: We will dispense with the duplicate. The document is dated December 23, 1949. It contains [212] the address Vashon, Wash-

(Testimony of Horace W. Underwood.)

ington with the date appearing in the upper right-hand corner. It is addressed to Mr. M. Felton, who has already been identified in the record as an employee of the respondent company.

Insofar as pertinent to the offer, it reads as follows:

“I take this opportunity to make application to you for retention of my job as ‘radio operator’ on the ‘MS Palisana’ which I was forced to relinquish a short time ago on account of the temporary lay-up of this vessel.”

It is signed by the witness and gives his telephone number. I think that identification makes it unnecessary to have a duplicate made.

(General Counsel’s Exhibit No. 8 previously marked for identification, received in evidence.)

Q. (By Mr. Teu): Did you receive any response from the application by letter for employment by Alaska Steamship Company?

A. No.

Q. You did not. Did you again on or about December 29, 1949, make application to the Alaska Steamship Company for employment?

A. Yes, I did.

Q. How did you make that application for employment?

A. I went to Mr. Felton’s office at Pier 42. [213]

Q. If you know, is that the office of the Alaska Steamship Company? A. It is.

Q. You saw Mr. Felton? A. I did.

(Testimony of Horace W. Underwood.)

Q. Did you have any conversation with him?

A. I had a short conversation with him, and he gave me an application blank.

Q. An application blank for what purpose?

A. Employment as radio officer. [214]

* * *

Q. (By Mr. Teu): What did you do with the application blank?

A. I filled it out and returned it to Mr. Felton.

Q. Where did you hand Mr. Felton the executed application blank? A. In his office.

Q. At Pier 42? A. Pier 42, Seattle.

Q. Did you ever hear anything further with respect to that application for employment?

A. I received a letter three months later. [216]

* * *

Trial Examiner Hunt: I will receive it.

(Documents previously marked for identification as General Counsel's Exhibit No. 10 were received in evidence.)

Mr. Hull: Am I to understand you are receiving these two exhibits, GC 9 and 10, under the stipulation that these were letters sent by the company to Mr. Underwood and to the union, and received by both parties?

Trial Examiner Hunt: That is my understanding of the stipulation on foundation. Do you have copies? [220]

* * *

(Testimony of Horace W. Underwood.)

Trial Examiner Hunt: Exhibit No. 10 has been admitted. I will receive Exhibit No. 9.

(Document previously marked for identification as General Counsel's Exhibit No. 9, received in evidence.)

Q. (By Mr. Teu): Mr. Underwood, did you at any time after December 29, 1949, make application to the Alaska Steamship Company for employment? [221]

* * *

A. Yes, from December 29, 1949, up to June 1, 1950.

Q. How did you ask Alaska Steamship Company for a job?

A. I wrote at least six letters to Mr. Zumdieck.

Q. Did you receive any response?

A. No, I did not.

Q. You did not receive a response to any of your letters? A. No.

Q. Did you after June 1, 1950, or thereabouts make application or ask Alaska Steamship Company for a job?

A. I don't believe so after June 1, because all the freighters were out and they did not have any jobs anyway.

Q. What do you mean, "were out"?

A. They had sailed for the season. It is seasonal work, and the Victoria and the Ring Splice were the only two left, and they went out along about that time or shortly after, and there wasn't

(Testimony of Horace W. Underwood.)

any more vessels or jobs with the Alaska Steam.

Q. Were you available during that period of time, December 23, 1949, to around June 1, 1950, for assignment on employment [222] as a radio officer by Alaska Steamship Company?

* * *

A. Yes, I was. [223]

* * *

Trial Examiner Hunt: It is not testimony. Let us see whether the witness had contact with the ARA with respect to the assignment, and let us see what happened. In November or December, 1949, did you contact ARA?

The Witness: On December 1, 1949, in the ARA office in [228] Seattle, I filled out an active list assignment slip.

Q. You executed such a document?

A. I did.

Q. What did you do with with it after you executed it?

A. I mailed it to Mr. Walker of the NLRB.

Q. You executed an application with ARA to go on the assignment list. What did you do with it?

A. There are several copies. One copy goes to the fellow who is making application, and the other copy goes to the main office in New York. I took one copy and left the other copies there.

Q. Now, Mr. Underwood, did you have any contact with ARA on or about April 16, 1950?

A. April 16, 1950?

(Testimony of Horace W. Underwood.)

Q. Yes. A. Yes.

Q. Tell us nature of that contact?

A. There was a cannery radio operators' meeting in the Frye Hotel, right across the street here, and Ralph Miller came to that meeting.

Q. Who is Ralph Miller?

A. Ralph Miller was Business Agent for the ARA, Seattle Branch, just prior to Mr. Lundquist.

Q. Did you have any conversation with Mr. Miller? A. I did. [229]

Q. Where? A. In the Frye Hotel.

Q. In Seattle, Washington?

A. Seattle, Washington.

Q. Was there anyone present at the time you and Mr. Miller had that conversation?

A. No, not while I was talking to Ralph.

Q. Tell us in your own words what the substance of the conversation was.

A. He said I would be put on the Flemish Knot of Alaska Steamship Company, provided I would withdraw the NLRB charges I filed against the ARA, and that he would hold a membership meeting, an ARA membership meeting, the following Wednesday, to determine if they would take me back into the union.

Q. Is that all the conversation you had with him? A. That is all.

Q. Were you given an assignment on the Flemish Knot, the ship you just testified about?

A. No; may I change that a bit—that was not quite all the conversation.

(Testimony of Horace W. Underwood.)

Q. Go ahead and tell all the conversation.

A. I called his attention to the fact that the Flemish Knot could possibly make a three weeks' trip to Alaska and come back and lay up, and I would not have any case, and I [230] would not have any job.

I said, if they will guarantee me six months' work on this Alaska run in the summer——

Mr. Darwin: The union?

The Witness: The union.

A. ——if they would guarantee six months' work, I would accept it.

Q. What did he say?

A. He did not say anything.

Q. Were you given an assignment on that ship?

A. He said he would take it up with the membership meeting, but he didn't say anything further than that.

Q. Were you given an assignment on the ship that you just referred to?

A. I did not hear from him on Wednesday. I told him I would be home all day on the Wednesday they were supposed to have the meeting, but I did not hear from him.

Q. Did you ever hear anything further from Mr. Miller?

A. Yes, just before I left for Kake, I was talking with him on the phone, and he offered me a job on an airplane, but I did not have the necessary flying time.

(Testimony of Horace W. Underwood.)

Q. Do you know when this offer of an airplane job was made?

A. Well, I went to Kake on July 23. It was before that. I don't recall the exact date. [231]

* * *

Q. Mr. Underwood, do you know Mr. Carl Lundquist? A. Yes, I do.

Q. Did you have any conversation with Mr. Lundquist on or about December 12, 1950?

A. December 13, when I went to his office.

Q. December 13, 1950. Where was his office located at that time?

A. It was in the Arcade Building.

Q. Do you know what position Mr. Lundquist occupies in that office?

A. He is the Seattle business agent for the ARA.

Q. You had a conversation with him in the office of ARA December 13, 1950? A. Yes.

Q. Who was present during the conversation you had with him?

A. Dallas Hughes was present.

Q. Any other person present when you had that conversation with Mr. Lundquist?

A. I believe Frank Homan came in near the end of it.

Q. Who is Mr. Homan?

A. He is a radio operator. [232]

Q. Now, will you tell us in substance what conversation you had with Mr. Lundquist on that date?

A. Well, I told him that I did not understand

(Testimony of Horace W. Underwood.)

his statement over the telephone the day before, in which he said that my name was right on the bottom of the list, where it belonged.

Q. Did you talk with him over the telephone on December 12 before you went to see him?

A. Yes.

* * *

Q. He was referring to the conversation with you on December 12th?

A. Yes, he admitted it; he said he found he was in error; that my name was not carried on the regular assignment list at all.

Q. Did he say anything further about the regular assignment list?

A. Yes, he said, "We have the active, the inactive, and the employed, and the deferred, the

* * *

Questions by Trial Examiner Hunt

Q. Did Mr. Lundquist tell you the nature of this extra list?

A. He said I was on this list, and I was not on the bottom of this particular list he mentioned.

Q. The extra list? A. The extra list.

Q. Did he say you were on the extra list?

A. I believe he called it an extra list; I am not sure he had a specific name for it.

Q. Did he state what kind of a list it was? permit card, and this extra list." [233]

A. No, he did not, as I recall it.

(Testimony of Horace W. Underwood.)

Direct Examination

(Resumed)

By Mr. Teu:

Q. Was there any conversation with respect to your registration with the ARA?

A. Oh, yes; I talked with Mr. Lundquist quite a while, [234] and I reviewed the whole case.

Q. What was the conversation?

A. Well, I tried to show him how I had been discriminated against.

Q. Did you tell Mr. Lundquist you had registered with the NRA?

(Colloquy off the record.)

Q. You told him you had registered?

A. Yes, I did.

Q. Before, on December 12, had you, during the conversation with Mr. Lundquist on the telephone made any reference to your registration?

A. Yes, I told him.

* * *

A. He said, "Yes, I know; I can't discriminate against you, and I also can't discriminate against my other members." [235]

* * *

Q. Go ahead.

A. I referred to the Coastal Rambler case in which I lost the ship because I abided by a government rule.

Trial Examiner Hunt: Did you tell Lundquist

(Testimony of Horace W. Underwood.)

you had lost the job because you abided by a government rule?

The Witness: Yes.

Trial Examiner Hunt: Don't tell anything except what you told him.

The Witness: That I lost the job because I abided by a government rule. I couldn't stand by a vessel while drawing unemployment insurance, so I had to give up my standby on the Coastal Rambler with ARA.

Q. (By Mr. Teu): Was there any conversation with respect to your place on the ARA registration list?

A. Well, yes, I asked him why I did not have a number the same as all the rest of them, and he said I didn't have a number because I was not a member.

Q. Was there any conversation with respect to the national listing? A. Yes.

Q. Tell us about that conversation.

A. Well, there wasn't very much of importance after that. [237]

Q. Did you have any conversation with Mr. Lundquist with respect to the national list of ARA?

A. Just what I told you. I asked him why I was not on the national list, and he said I was not on the national list because I was not a member.

Q. Was there any conversation with respect to the Seattle Branch list? A. Yes.

Q. What was that conversation?

A. Well, he had the list there. He said he had

(Testimony of Horace W. Underwood.)

me on the list. He said, "You are on the list—on the local list here."

Q. Did you ask him as to what your number was?

A. I did ask him that. That is when he answered the question that I did not have a number.

Q. Mr. Underwood, you referred to the Coastal Rambler job. At what time did this incident with respect to that ship occur?

A. It occurred on—you mean when the ship laid up?

Q. Yes.

A. That was right around the first of August.

Q. What year? A. That was in 1949. [238]

* * *

Direct Examination

(Continued)

By Mr. Geisness:

Q. Between December 1, 1949, and December 1, 1950, did Alaska Steamship Company itself offer you any jobs?

A. No, sir, they did not. [239]

* * *

Q. (By Mr. Geisness): Besides those two offers of jobs through the ARA that I just mentioned, did you get any other offers of jobs through ARA between December 1, 1949, and December 1, 1950?

A. Since they mentioned the Baranof, I remember now that they did offer me a relief job on the

(Testimony of Horace W. Underwood.)

Baranof, as the relief job was no good for any radio man——

Q. When was that?

A. I don't remember the date, because I had already told them I was not available for a relief job.

Q. Do you remember the approximate time?

A. No, it was in between the period you mentioned.

Q. Were there any others, other offers made by ARA of a job?

A. I had one offer of a job. It was not official. They called me—Clyde Bowen called me at the time. He acted as Miller's secretary, an unofficial secretary. He called me and told me that they had an old rustpot bound for Honolulu [240] that everybody else had turned down. He said, "Would you be interested in it?" I said, "No, I wouldn't, but if you force it on me, I suppose I will have to take it, because I am drawing unemployment insurance." He said, "Just forget I called you."

Q. Was that during the period I mentioned?

A. Yes.

* * *

Mr. Teu: Can you refuse offer of an assignment by ARA if you wish to?

The Witness: Yes.

Q. (By Mr. Geisness): Do you by that refusal lose any points on the list? A. No, sir.

Q. If you work on an assignment or otherwise, is there any loss of points on the register?

A. You lose 30 points.

(Testimony of Horace W. Underwood.)

Mr. Darwin: You drop 30 places.

The Witness: You drop 30 places.

Q. Is that true of temporary assignment as well as permanent assignment? A. Yes. [241]

* * *

Cross-Examination

By Mr. Hull:

Q. Mr. Underwood, I believe you have testified that you were employed during the year 1949 on the vessel Coastal Rambler. Am I correct?

A. Yes, sir.

Q. And the Examiner has read into the record here certain records from your discharge book; is that right? A. Yes.

Q. And that discharge book is a book which a seaman keeps is it not, in which are recorded the times when he signs on and signs off articles on vessels. Am I correct in that?

A. Yes, that is correct.

Q. And the Examiner read with reference to the Coastal Rambler that you had signed on the Coastal Rambler 2 April, 1949, 4 May, 1949, and 1 June, 1949, and I will ask you now if those times refer to the times that you signed articles on the Coastal Rambler? Is that correct?

A. It must be if it is in that book there, because you never have that book signed unless it is for the articles.

Q. Yes. Now, that is fine. I believe the employment records of the company—and I want to

(Testimony of Horace W. Underwood.)

refresh your recollection [244] on this—show that you left the Coastal Rambler on August 6, 1949. Is that in accordance with your recollection?

A. I thought the book showed August 1st.

Q. That might be the time you signed off, but you remained aboard?

A. There may have been a port pay.

Q. Yes. But is it your recollection that August 6, 1949, is about the time you terminated on the Coastal Rambler?

A. I don't remember for sure, but it is possible that that is right.

Q. That is about the correct time, anywhere between the 1st and the 6th? A. Yes.

Q. Now, at the time you left the Coastal Rambler, Mr. Underwood, the vessel laid up, did it not?

A. I presume it did. They told me it was laid up.

Q. And the crew paid off the vessel?

A. That is right.

Q. During the period from 2 April, 1949, when you signed on the Coastal Rambler for the first time, and August 6, 1949, you were continuously employed on the Coastal Rambler, were you not?

A. That is correct.

Q. And the fact that your discharge book indicated that you signed articles on 2 April, 1949, and 4 May, 1949, and [245] 1 June, 1949, only meant that the vessel commenced new voyages at that time. Is that right? A. That is correct.

Q. But you were continuously employed from

(Testimony of Horace W. Underwood.)

the second of April to August 6th? A. Yes.

Q. And you were dispatched to that job on the Coastal Rambler by the ARA on April 2nd, were you not? A. By the ARA.

* * *

Q. (By Mr. Hull): This, Mr. Underwood, is what I want to make clear: You stayed with the vessel—you remained continuously employed on the Coastal Rambler from April 2 to August 6th, 1949. Is that right? A. Yes, sir.

Q. And that is generally true of radio officers. If they go on a ship, they remain in continuous employment, no matter how many voyages the ship makes—isn't that [246] correct?

A. You mean if the ship is in continuous operation?

Q. Yes. A. Yes, that is true.

Q. Yes, that is all I mean. That is generally true? A. Yes.

Trial Examiner Hunt: You mean to say the job the witness had on the Coastal Rambler was a permanent job until such time as the ship laid up?

Mr. Hull: Yes, and he testified, I believe, that the ship did lay up on August 6.

Trial Examiner Hunt: Is that correct?

The Witness: Yes.

Trial Examiner Hunt: It is a permanent job until it lays up?

The Witness: Until it lays up.

Q. After you terminated on the Coastal Rambler

(Testimony of Horace W. Underwood.)

—I am not clear as to your testimony on this, and I want to be sure—I am a little confused on it. You said you had a right under your applicable union rules, as I understand it, to stand by that ship. Is that correct? A. That is correct.

Q. But you, however, desired to draw unemployment compensation, is that correct?

A. That is correct. [247]

Q. And the unemployment compensation department told you that you could not stand by the ship and draw unemployment compensation—am I correct? A. That is correct.

Q. So you decided to draw unemployment compensation, is that correct? A. That is true.

Q. And by doing that you relinquished your rights to stand by the vessel?

A. I relinquished my union rights, you mean?

Q. Yes. A. Yes, that is correct.

Trial Examiner Hunt: I am sorry, but I have got to interrupt.

Is this period of standby one which would have been without compensation because the ship was laid up?

Mr. Hull: That is right.

Trial Examiner Hunt: Is that your understanding?

The Witness: That is my understanding, that I don't get any pay; I just hold my union right to the vessel.

Q. The company terminated operation of the

(Testimony of Horace W. Underwood.)

vessel on August 6th, and the vessel laid up, and the crew was paid off?

Trial Examiner Hunt: The vessel could have been laid up for repairs or any number of reasons. The witness then having the job could have been in the position of what we call [248] "standby"?

Mr. Hull: Yes.

Trial Examiner Hunt: That is on the ARA records it would have been his job whenever that ship sailed again?

Mr. Hull: Under his union rights.

Trial Examiner Hunt: Yes.

Mr. Hull: That is correct.

Trial Examiner Hunt: And in order to draw workmen's compensation—

Mr. Hull: Unemployment—

Trial Examiner Hunt: —unemployment compensation, I mean, the witness had to give up the right to stand by?

Mr. Hull: That is correct.

Mr. Darwin: That is correct.

Trial Examiner Hunt: And that threw the job open to the man on the top of the list when the ship next sailed, is that what you are saying?

The Witness: Yes.

Q. And the effect of your drawing unemployment compensation, Mr. Underwood, was that you went back on the ARA assignment list for dispatch in normal course according to your relative position? A. Yes, although—

Q. That is all I want. Just the answer yes or no.

(Testimony of Horace W. Underwood.)

Now, with reference to the Palisana, I believe you [249] said you signed on September 11, 1949?

A. That is correct.

Q. And the Examiner read from your discharge book and also indicated that you had signed on again October 21, 1949?

A. That is correct.

Q. Now, you said about November 22 you were terminated on the Palisana?

A. That is about the date.

Q. Now, again, you were continuously employed on the Palisana from September 11 to November 22?

A. That is correct.

Q. And the date October 21 simply means the vessel started on a new voyage on or about that date?

A. Yes.

Q. And you signed new articles for that voyage, but as far as the company was concerned, you were continuously employed from September 11, 1949, to November 22, 1949? Is that right?

A. That is correct.

Q. And at that time the Palisana laid up?

A. No, she didn't move; she stayed at Pier 42.

Q. Well, she was inactive and the crew paid off?

A. Yes.

Q. And you were laid off with the rest of the crew at that time? [250]

A. That is correct.

Q. And the company did not continue to pay you after that date?

A. No.

Q. Now, when you said you took this job on

(Testimony of Horace W. Underwood.)

the Palisana, Mr. Underwood, you said it was a temporary job, am I right?

A. It is temporary provided Tommy Josserand came back.

Q. At the time it was tendered to you or at the time you took it, you knew it was a temporary job, am I right?

A. I knew it was temporary under certain rules of the Union, but we have had lots of discussion—

Q. But you knew it was offered as a temporary or a relief job?

A. I knew it would not necessarily have to be a temporary job.

Q. But it was offered to you as a relief job?

A. Not necessarily.

Q. Let me ask this, then: You also testified that the job on the Palisana was offered to everybody else in the ARA Hall before it was offered to you?

A. That is right. I would not accept it until they did offer it to everybody else.

Q. And nobody else would accept it because it was a relief job? [251]

A. That is right.

Q. Then when you terminated on the Palisana, Mr. Underwood, you went back on the ARA assignment list in whatever your relative position was as of that date? Am I right?

A. Yes, that is right.

Q. I believe you testified, Mr. Underwood, this morning, that you had received what has been admitted in evidence as General Counsel's Exhibit 9

(Testimony of Horace W. Underwood.)

and General Counsel's Exhibit No. 10. Do you recall that? A. Yes.

Q. After that, did you go to the ARA hall and request to be dispatched?

A. Yes, the following Monday morning.

Q. And that you so advised the company that you had done that? A. Yes, I did.

Q. When did you say that was? The following Monday?

A. The following Monday after I received the mail, the letter on the 31st of March, 1950. It was the following Monday. [252]

* * *

Mr. Hull: Mr. Examiner, I would like to refer to General Counsel's Exhibit 1, and since it is not documented or identified, I think I will just ask to look through the file. I want to hand the witness, Mr. Examiner, a portion of General Counsel's Exhibit No. 1, and I guess I can best designate it by saying it is a charge filed against the Alaska Steamship Company dated 1/17/50, signed by Mr. Underwood, and I would like to state now I am calling the witness' attention to a typewritten addition or attachment [253] to that charge, and I will hand that to Mr. Underwood, and ask him about it.

Q. (By Mr. Hull): Did you prepare that typewritten statement? A. Yes, I did.

Q. Now, I want to ask you if you will refer to the third paragraph of the first page of that, where it will—where it says, "It is a fact that in my years

(Testimony of Horace W. Underwood.)

of individual efforts to be treated as a bona fide employee of this company"—what did you mean by that, Mr. Underwood?

A. Well, I mean that, and as the union knows, I have been on record for years—Mr. Lundquist can verify that fact, that I want to work for one company, just like the rest of the licensed officers, and I consider I am just as much an employee as the master and the mates, and the rest of the licensed officers. That is what I mean by that.

Q. So that you men, as I understand your testimony, that you only want to work for the Alaska Steamship Company?

A. Of course, since they have almost a monopoly on that run.

Q. You want to work in the Alaska trade?

A. That is right. I want to work in the Alaska trade.

Q. Only? A. Only.

Q. You would not accept a job on any other steamship run [254] offshore?

A. Not except under duress.

Q. I take it that you mean you would accept a job offshore?

A. Well, I want to eat, the same as you.

Q. It is not your desire to work for any steamship company other than the Alaska Steamship Company—correct? A. That is correct.

Q. And because you only want to work in the Alaska trade, Mr. Underwood, I take it that you

(Testimony of Horace W. Underwood.)

did not make any applications for employment to any other steamship company at all?

A. No, sir; I didn't.

* * *

Q. (By Mr. Hull): Now, referring again to that charge, [255] Mr. Underwood, and the last sentence in paragraph 3 of the first page, there, which reads as follows:

“I have lost considerable income and have been handicapped by being forced to wait on the beach until my name came up on the ARA closed-shop hiring list and a vacancy occurred in this company.”

What do you mean by having to wait on the beach?

A. I mean by that I am competing with membership of the ARA only for a ship with the Alaska Steamship Company, which is a very small proportion of the total jobs available, while at the same time the entire membership of ARA compete with me for my small portion of the work.

Q. Because they will take jobs offshore and you won't?

A. They will take any job, and I take only the one on the Alaska run.

Q. Now, if you will refer to the second page of that charge, Mr. Underwood, I want to ask you concerning this statement, “I waited five months on the beach list of ARA for a job with the Alaska Steamship Company. On April 1, 1949, I was assigned by ARA to the MS Coastal Rambler of the

(Testimony of Horace W. Underwood.)

Alaska Steamship Company. This vessel was supposed to run for a normal season (six or seven months).”

Then you proceed to say that you applied for unemployment compensation, and then you say this:

“The rules of this organization prohibited me from [256] standing by a laid-up ship since I would not be actively seeking work.”

Let me ask this: Do you mean the rules of the unemployment compensation commission were such that you could not hold your union rights to stand by the ship and still draw unemployment compensation?

A. That is right.

Q. And by “this organization” you mean the Unemployment Compensation Department?

A. I mean the ARA.

Q. You said, “The rules of this organization prohibited me from standing by a laid-up ship, since I would not be actively seeking work.”

By that you mean the Unemployment people—

A. Oh, yes; I did not understand. The unemployment rules would prohibit me from standing by the job because I would not be actively seeking work.

Q. I just wanted to clarify it.

Trial Examiner Hunt: By “standby” I understand he could not ship out on another ship before the departure of the ship he was standing by?

Mr. Darwin: That is right.

Trial Examiner Hunt: If he has a choice ship and he wants to stay with it, he gives up the op-

(Testimony of Horace W. Underwood.)

portunity for other employment in order to hold the good job? [257]

The Witness: That is right.

Mr. Darwin: That is why we have the rotational system of spreading the work.

Q. (By Mr. Hull): Now at the top—this is page 3 of that same document, Mr. Hunt—it says this—the first full paragraph on that page.

“On September 14, 1949, I accepted the job as relief operator on the Alaska Steamship Company MS Palisana.”

Now, you knew at the time you accepted that job it was a relief job?

A. I cannot answer that yes or no, because there was a lot of union activity involved there.

Mr. Darwin: Now, Mr. Examiner—

Mr. Teu: He says he can't answer it yes or no, and he is entitled to answer the question in his own way.

Mr. Darwin: I am going to object, because there will be an awful lot of union activity, and I will object to any matter except matters involved in this hearing.

Trial Examiner Hunt: Do you have in mind the question he asked?

(Reporter reads question.)

Trial Examiner Hunt: Now, I am going to let you answer it in your own way, but I want you to confine whatever you say to that question. Don't ramble around. [258]

(Testimony of Horace W. Underwood.)

Mr. Hull: I think that can be answered yes or no. It seems to me it is susceptible of a categorical answer.

Trial Examiner Hunt: I don't know. He says it can't be, and I am going to take his judgment, but his answer will be subject to a motion to strike.

A. Technically it would be known as a relief job as far as ARA rules are concerned, but remember that I accepted this job only after it was offered to every other member in the hall and none of them would accept it. Then I took it, and the Seattle membership, a large majority of them, had intended for me to keep this job and buck Miller, the agent for ARA. I was to keep this job on the Palisana if Tommy Josseland did not get his license and could not come back to the job.

Trial Examiner Hunt: You started on the job as a relief job with some expectation, depending on what happened to someone else's license, that it might become more than a relief job?

(Witness nods affirmatively.)

Mr. Darwin: Now, I am going to ask in behalf of the respondent union to strike so much of the answer which begins with, " * * * the Seattle membership intended for me to keep this job * * *" and so on.

Mr. Teu: If this is within his knowledge, it is not subject to the motion. [259]

Mr. Darwin: I am addressing the Examiner.

Trial Examiner Hunt: Did you complete it, Mr. Darwin?

(Testimony of Horace W. Underwood.)

Mr. Darwin: Yes, I did.

Trial Examiner Hunt: I have some question about the probative value of the testimony as to the expectation of the membership of the union, but that statement is part and parcel of a statement I think he attributed to Miller. They intended to buck Miller, who was the agent at the time, and I will let the answer stand with my statement that I question the probative value of what he thinks the expectation of others was. I find it difficult to strike part of that answer. Let us have another question, Mr. Hull.

Q. (By Mr. Hull): I will ask you this, Mr. Underwood: I take it your position is that you feel that you are entitled to certain seniority rights with the Alaska Steamship Company, is that correct?

A. That is correct.

Q. And you feel because under the rotational hiring system you must compete for all jobs, that you are being discriminated against in some way. Is that your attitude in this case?

A. That is correct.

Mr. Hull: That is all the questions I have. [260]

Cross-Examination

By Mr. Darwin:

* * *

Q. Now, in answer to Mr. Hull's question, you said that when you took the job on the Palisana that it was not necessarily true that you were offered

(Testimony of Horace W. Underwood.)

that job as a relief job. Do you remember that testimony? A. Yes.

Q. Now, your assignment to the Palisana was on the 14th of September, 1949? That is correct, isn't it? A. It was about that date.

Q. I show you a photostatic copy of three official assignment slips, and ask you to look at the third one from the top.

A. (Witness does so): I have looked at it.

Q. All right. Is that your signature?

A. This is my signature.

Q. Now, that clearly indicates that the assignment to you was a relief trip? Isn't that right?

A. Technically, yes.

Q. When the assignment was made to you on the 14th of September, that was a relief job that you took—that is right, isn't it?

A. Technically, yes. [270]

Q. I also ask you if you would be good enough to look at the three assignment slips on that, and ask you if those bore your signature on the originals which you signed?

A. Yes, they are all my signatures.

Q. Now, I will ask you to look at the first one and tell me whether it is not a fact that when you were assigned to the MV Coastal Rambler from the active list that was a permanent job and it was so indicated, isn't that right?

A. That is right. [271]

(Testimony of Horace W. Underwood.)

Q. (By Mr. Darwin): Now, Mr. Underwood, you were sent these telegrams for job assignments since Mr. Lundquist has been port agent here, isn't that correct? A. I believe so. [273]

Mr. Darwin: Reading the first one, it is dated October 13, 1950, to Horace Underwood, Vashon, Washington. "MSTS for Military Sea Transport Service is an Alaska vessel. Radio officer assignment open. Call Mr. Walker, MAin 0100." Signed, Lundquist.

The next, "12/19/50," addressed in the same manner, and at the same place, "Four to five months assignment radio officer Alaskan waters available. Sailing Thursday. Government-owned vessel. Phone for details." Signed, Lundquist, ARA Port Agent.

The next, addressed the same way, 2/19/51, "Expect coastwise relief trip about 12 days available tomorrow, Wednesday. Advise if interested." Signed, Lundquist.

Q. (By Mr. Darwin): Now, in respect to the first telegram of October 13, 1950, isn't it a fact, Mr. Underwood, that you telephoned Mr. Lundquist and acknowledged the receipt of the latter telegram? A. I did.

Q. Isn't it a fact that you told him at that time that you would rather wait for an Alaska Steamship Company job? A. That is right.

Trial Examiner Hunt: What do the letters "MSTS" stand for?

Mr. Darwin: Military Sea Transport [276] Service.

(Testimony of Horace W. Underwood.)

Q. With respect to the December 19, 1950, telegram, you phoned Mr. Lundquist the next morning, did you not? A. I did.

Q. And you acknowledged receipt of the wire?

A. That is right.

Q. Mr. Lundquist gave you some details as to the kind of job that was? A. He did.

Q. Did he tell you it would be a job for about four months?

A. He said he thought it would be about four months or longer, that it was a government job.

Q. You said that you would not take it because it was that long, is that right?

A. That is the main reason.

Q. You also indicated that you would not take it because you were still wanting an Alaska Steamship Company job?

A. Let me clarify it. I said it would be four months. What I meant by that was not that it would be four months, but I could not return to Seattle for four months. I would not take it because I would not get back; I could not get back for four months. That was the reason.

Q. Yes. And I think you also indicated that you were still interested in an Alaska Steamship Company job? A. That is right.

Q. In a permanent job on an Alaska Steamship Company vessel? [277]

A. That is right.

Q. And in response to the last telegram, February 19, 1951, you advised Mr. Lundquist that you

(Testimony of Horace W. Underwood.)

had been requested to come to the impending hearing which was due to be heard on the 27th of February? A. That is right. [278]

* * *

Trial Examiner Hunt: All right. We have a number of letters produced by the union and allegedly from the witness; likewise by the [279] company.

* * *

Now, Mr. Darwin, will you state, if you please, the dates, the earliest and latest dates, of the letters from the witness to the union and the number of letters between the dates?

Mr. Darwin: All right. The earliest date is April 1, 1949, and the last date would be July 3, 1950.

Trial Examiner Hunt: How many letters within that period of about 15 months?

Mr. Darwin: Within that period there are six letters.

Trial Examiner Hunt: I will ask the parties if they will stipulate in lieu of receiving these letters in evidence that the witness said in one or more of the letters that he opposed the rotational system of assigning radio officers to jobs, and that he also said that he was interested in employment with the Alaska Steamship Company only, and that he opposed competing with all other radio officers for jobs with the Alaska Steamship Company; that the fact is that although not stated in any particular letter, that at all times material and, indeed, since

(Testimony of Horace W. Underwood.)

1946, the witness has been interested only in employment with the Alaska Steamship Company and has so stated to Mr. Lundquist and Mr. Lundquist's predecessors back to the year 1946. In addition, the witness stated in one or more letters that he was aware of the provision that for each week a radio officer worked on a relief job his name dropped 30 places on the assignment list; that [280] the witness also stated in one or more letters that he opposed the rule which limited standby to maximum periods of 90 days and specifically said that such rule was not a good one insofar as employment by Alaska Steamship Company was concerned.

Insofar as I have composed your stipulation, gentlemen, are you in agreement?

* * *

Mr. Teu: I see. The record does show the stipulation was based on the letters?

Trial Examiner Hunt: Yes.

Mr. Teu: I will so stipulate.

* * *

Trial Examiner Hunt: On the record.

For the purpose of clarity, there are two more points: When I use the words that the witness opposed competing with [281] all other radio officers for jobs with the Alaska Steamship Company, I should have said all other radio officers on the assignment lists or list for such jobs with Alaska Steamship Company.

Mr. Teu: I will stipulate that.

(Testimony of Horace W. Underwood.)

Trial Examiner Hunt: Now, Mr. Hull wanted to be doubly clear that he is stipulating only as to his understanding of the content of the letters from Mr. Underwood to the union, and definitely, we are not dealing now with the letters from Mr. Underwood to the respondent company.

Now, insofar as I have stated the stipulation, Mr. Darwin, are you in accord with it?

Mr. Darwin: So far.

Trial Examiner Hunt: Now, we come to the witness' statement in at least two letters, one of which was dated December 20, 1949—and I do not have the date of the later one—that he knew his job on the Palisana was a relief job, and if I can recall correctly, Mr. Darwin, you wanted to read into the record one paragraph of a later letter?

Mr. Darwin: That is the April 10, 1950, letter?

Trial Examiner Hunt: All right. Will you read it?

Mr. Darwin: When I quote, I am now quoting from Mr. Underwood's letter to the president of our union, dated April 10, 1950:

“When I took the relief job on the Palisana I said to [282] Ralph Miller and Clyde Bowen, ‘Offer this job to everybody on the list. If none will accept it, I will protect Tommy Jossierand and relieve him.’ No one on the list was willing to sacrifice his position on the list to relieve Tommy.

“When I relieved him I unquestionably sacrificed all my chances on the list and gambled on whether the relief job on the Palisana may even-

(Testimony of Horace W. Underwood.)

tually become permanent or Tommy will come back and claim it." [283]

* * *

Mr. Hull: I have produced letters commencing March 9 through May 25, and I believe there is one other.

Mr. Teu: March 3, I believe, Mr. Hull.

* * *

Trial Examiner Hunt: On the record. I will ask the parties if they will stipulate that between March 3, 1950, [285] and May 25, 1950, the witness wrote to the company eleven letters in which the witness expressed in one or more of the letters (1) a continuing interest in obtaining employment by the company; (2) the witness' opposition to the rotational system of assignment of the radio officers; and, (3), the witness' thought about a system of hiring based upon seniority, which, in the witness' judgment, would have afforded him a better chance of employment by Alaska Steamship Company.

Mr. Teu: I so stipulate, Mr. Examiner.

* * *

Trial Examiner Hunt: On the record.

I understand that insofar as I have stated the proposed stipulation, Mr. Hull and Mr. Teu and Mr. Teu for Mr. Geisness are in agreement.

In addition, Mr. Hull just pointed out the letter from the witness to the company under date of December 20, 1949, in which the witness expressed his opposition to the rotational system of assignment

(Testimony of Horace W. Underwood.)

of radio officers, it being Mr. Hull's [286] position that as early as that date, namely, December, 1949, the company was aware of the witness' position.

Mr. Teu: I so agree. [287]

* * *

Trial Examiner Hunt: You will recall, Mr. Darwin, that we had some discussion about a stipulation concerning the essential contents of the letters from the witness to the company. I gave you an opportunity last evening to examine those letters.

Mr. Darwin: Yes.

Trial Examiner Hunt: Are you in accord with the stipulation?

* * *

Mr. Darwin: The question to me is, do I agree with this stipulation?

Trial Examiner Hunt: Yes.

Mr. Darwin: Yes, I do.

Trial Examiner Hunt: You are in accord with it?

Mr. Darwin: Yes. [291]

* * *

Cross-Examination

(Resumed.)

By Mr. Darwin:

Q. When did you accept the job with the Alaska cannery in 1950? A. July 23. [295]

* * *

Q. (By Mr. Darwin): What did you mean when you wrote, "I personally believe you may pos-

(Testimony of Horace W. Underwood.)

sibly have the solution to this hiring hall and discrimination problem in your present move.”

What did you mean by discrimination?

A. I can tell you. If you operated——

Q. Take it slowly. I want to hear it, and the reporter [310] wants to get it.

A. If you operated a hiring hall that is non-discriminatory, and would come in and try to go on your list, he would have a number—he would be given a number the same as a regular member, and he would be allowed to climb to the top of that list. In other words, he would be treated just exactly like your members in every respect. That is a non-member, who had never worked for the company before, could come in and apply for a job as a radio officer.

Q. Of course if a man, being a non-union man, does not come in and make known his availability and give us his registration in writing, we would not begin to know he is available for work, would we? Just answer yes or no.

A. You mean you would not know? [311]

* * *

Q. (By Mr. Darwin): On May 7, 1950, you wrote a letter—and this, incidentally, is the very last I have concerning these letters—if that is any comfort or assurance—in this letter that you wrote to Mr. Zumdieck also you say, “You can plainly see that I will get nothing but discrimination from Miller or ARA. So I am asking you to put me to work, and I in return would withdraw the charges

(Testimony of Horace W. Underwood.)

against the Alaska Steamship Company and let them stand against ARA.”

What did you mean by that?

A. I meant just that; I would withdraw charges against the Alaska Steam, because they would be complying with the law [313] to put me to work. I have to work. I have a family to support.

Q. In other words, Mr. Underwood, in all of these writings and these communications to the company, your position has always been that you would do anything which would put this union in an embarrassing position with the government, the Labor Board, with respect to the Act, even if it meant to cooperate with the company?

Mr. Teu: I object to that, Mr. Examiner.

Trial Examiner Hunt: He may answer.

A. No, I am not trying to harm the union. I am not trying to harm anybody. I am just trying to be able to make a living like all the rest of the licensed officers do, and live my life in a decent sort of way, and not be controlled by a roulette wheel.

Q. What do you mean by a roulette wheel?

A. By that—we have a man on the Baranof who has worked steady three years because that ship never laid up. I had a job on the Coastal Rambler, where I worked four months, and on a trick lay-off I am out of work.

Q. What do you mean by “trick lay-off”?

A. That is the only time it ever occurred in a case like that.

Q. That is an instance in which you guessed wrong as to whether you should stand by the Coastal

(Testimony of Horace W. Underwood.)

Rambler, or whether you should collect unemployment insurance? Is that right? [314]

A. That is not true.

Q. What is true?

A. I did not guess wrong. I decided to stand by, and I can produce witnesses to prove I did stand by, and no one knows how long this ship will stand by. The Ring Splice did the same thing. They thought she would be there a short time, and she stayed there a year.

If you apply for unemployment insurance, it takes a month to get a nickel, and I was just about broke; so I was between the devil and the deep blue sea. I had to apply for unemployment insurance or mortgage my place to live.

Q. Mr. Underwood, when you were on the Coastal Rambler as a permanent job holder, and it did—and it tied up, you at that time thought she would tie up for about three or four months, didn't you?

A. No, I did not, because I had read articles in the papers and clippings that my father-in-law sent me from Ketchikan, that there was lots of salmon in Southeastern Alaska, and I figured she would go out again.

Q. As a matter of fact, you said so in writing several times, and as a matter of fact, you also put that as the basis for your statement, or, as you call it, the brief to the National Labor Relations Board, didn't you, that you expected the vessel to tie up for about three or four months? [315]

(Testimony of Horace W. Underwood.)

A. I didn't put it that way. I said no one knows.

Q. You expected it to tie up for three or four months? A. No, I didn't expect it.

Q. How long did you expect the Coastal Rambler to tie up?

A. I figured she would go out in a little over 30 days at the time, because that would be when the fish would be in the cans up there. [316]

* * *

Q. (By Mr. Darwin): So that is what you meant by the roulette wheel operating against you, is that right? A. In a sense.

* * *

A. (Resuming): —on the Palisana and these others, these other ships there, I say it is a roulette wheel because I completely—it started because I was trying to abide by a government rule that said I could not keep my job. That was in conflict with your union rule, and that started the [318] whole chain of things.

Q. Let me interrupt. By "in conflict" with our union rules, you mean they have existing shipping rules and customs in the Seattle port. Is that what you mean?

A. Not only the Seattle port, but all the ports.

Q. Well, particularly, we are concerned with the Seattle port?

A. If my financial condition was such, I would not have applied for unemployment insurance.

(Testimony of Horace W. Underwood.)

Mr. Darwin: Read that again.

(Reporter reads last answer.)

Trial Examiner Hunt: I have a note that I want to go into this matter of unemployment compensation, so that the record will be perfectly clear. I am not sure that it is. I don't want to interrupt you on cross-examination with a line of inquiry I will take up later. If you do want to go into that particular subject matter, that will be fine. I want to get it perfectly clear why he went on the active list at the time he was seeking to draw unemployment compensation.

Mr. Darwin: All right.

Q. (By Mr. Darwin): Why did you do that?

A. The reason for that is because by waiting you might miss by minutes or hours getting a job. Any delay such as a day in going on to that list might mean somebody else might [319] possibly be ahead of you. They might beat you out by one number on a job later on.

* * *

Questions by Trial Examiner Hunt

Q. (By Trial Examiner Hunt): The job on the Coastal Rambler which you had was a permanent job? A. Yes.

Mr. Darwin: When you have a permanent job, are you on the active list?

The Witness: You are on the employed list.

Q. (By Trial Examiner Hunt): That is right; you are not on the active list?

(Testimony of Horace W. Underwood.)

A. You are not on the active list.

Q. All right. When you have a relief job, you are on the active list?

A. The employed list.

Q. All right. For the time you are on the relief job, you are on the employed list, but when you finish on the relief job, you go back on the active list, dropping a particular number of points for each week you were on the relief job? Is that right?

A. That is the same as for a permanent job.

Q. Do you drop the same number of points when you go back on the active list for each week you have a permanent job? [320]

A. Right.

Q. All right. You have a permanent job, and the ship lays up. If a ship is laid up for several months, you can stand by the job, by the ship, if you want to?

A. Without pay.

Q. That is right; without pay. So that when the ship next goes out, you go out with it?

A. Yes, that is right.

Q. Now, during the months it is laid up, you will not be referred to a job from the active list?

A. That is right.

Q. You will have to get other employment if you want it, according to your resources?

A. That is right.

Q. When the Coastal Rambler tied up you were faced with the need of obtaining money?

A. That is right.

Q. The way to do it, as you saw it, was to get unemployment compensation?

A. Yes.

(Testimony of Horace W. Underwood.)

Q. The unemployment compensation regulations would not permit you to draw that compensation so long as you were standing by?

A. That is right.

Q. Was that because under those regulations there was a [321] presumption that you were employed or not available for work?

A. You are not actively seeking a job. [322]

* * *

Trial Examiner Hunt: We will have to get the testimony from the witness, rather than comments from counsel, unless we have a stipulation.

I think I understand now why he had to give up standby on the Coastal Rambler. And I suppose the next step is when the Coastal Rambler did next ship out, the man who got the job as radio operator got it in the usual course of events from the top of the active list. Is that right?

The Witness: I am pretty sure he did.

Mr. Darwin: At which time you were at the bottom, or working your way up from the bottom of the list?

The Witness: I would not be at the bottom.

Mr. Darwin: If you were working your way up, you would not be at the bottom.

Trial Examiner Hunt: You would be going up the list?

Mr. Darwin: That is right.

The Witness: Yes.

Trial Examiner Hunt: Were you going up the

(Testimony of Horace W. Underwood.)

list any more slowly than a member of the union?

Mr. Darwin: At that time he was a member of the union.

Trial Examiner Hunt: I stand corrected. There is one [324] other point. I think the testimony of the witness is, and it is perhaps also shown by General Counsel's Exhibit 7, that some ships of the respondent company, such as the Baranof, are rarely laid up, and other ships are laid up much more frequently?

The Witness: The Baranof does not lay up. She runs steady.

Trial Examiner Hunt: She is in commission continually?

The Witness: Yes.

Trial Examiner Hunt: The man who goes off the top of the list and gets a job as radio operator on the Baranof has substantially a continual employment?

The Witness: Yes.

Trial Examiner Hunt: The man on the top of the list, if for any reason he expects a job on the Baranof to become vacant, could seek to obtain an assignment to that job by refusing other assignments in the meantime, thereby holding his place on the top of the active list, so that if his expectation that the Baranof would have a vacancy comes true, he is in a position to get it?

The Witness: Yes, that is right. [325]

(Testimony of Horace W. Underwood.)

Questions by Trial Examiner Hunt

Q. (By Trial Examiner Hunt): Does the first one of these assignment slips show, Mr. Underwood, that you went to the Coastal Rambler from the active list in a permanent capacity?

A. Yes, it does. He usually puts—here it says, “Temporary” and “Permanent.” You see, the “X” I am speaking of?

Q. Yes. All right. The second shows that you went from the standby assignment on the Coastal Rambler to the active list?

A. Yes, that is right.

Q. The third, that you went from the active list to the Palisana in a relief capacity?

A. That is correct. [327]

* * *

Q. Now, the fourth photostatic copy shows that you went from the Palisana to the active list?

A. Yes.

Q. Is the active list the same as the active beach list? A. Yes, that is the same thing.

* * *

Cross-Examination

(Continued.)

By Mr. Darwin:

* * *

Trial Examiner Hunt: I will receive in evidence Respondent Union's Exhibit No. 5 for identification.

(Testimony of Horace W. Underwood.)

(Documents heretofore marked as Respondent Union's Exhibit No. 5 for identification, was received in evidence.)

Q. (By Mr. Darwin): Mr. Underwood, since the signing of the very last assignment slip shown on Respondent Union's Exhibit 5, December 1, 1949, have you ever signed another one of these assignment slips?

A. I signed one for the Pacificus, the job you offered at the last hearing.

Q. That is right. And that was on February 27,—

A. February 27.

Trial Examiner Hunt: So that the record may be clear—I am sorry to interrupt you—I am not sure that we do have anything in the record about it. But at the time [328] we were in session during February, when it became apparent that on motion by the two respondents we would recess for about a month, the witness was advised that his name had been reached for assignment, and I think one of the reasons we fixed the date for reconvening as of yesterday was to make sure he would be back from that assignment by yesterday.

You did take that assignment?

The Witness: Yes, I did.

Q. (By Mr. Darwin): And between December 1, 1949, and February 27, 1951, you did not sign any assignment slips?

A. I don't recall signing any assignment [329] slips.

(Testimony of Horace W. Underwood.)

* * *

(Document previously marked for identification as Respondent Union's Exhibit No. 6, was received in evidence.) [330]

* * *

Trial Examiner Hunt: On the record.

The parties stipulate that the union, whether by contract or not, does make referrals to employers other than those named in General Counsel's Exhibit 3 for identification.

* * *

The referrals just mentioned are by request of the employer or employers. That is the stipulation. Are you gentlemen in accord with it?

Mr. Teu: Yes, Mr. Examiner.

Mr. Geisness: Yes.

Mr. Darwin: Yes.

Mr. Hull: Yes; I am agreeable.

Q. (By Trial Examiner Hunt): Mr. Underwood, we had a stipulation yesterday that you had said on a number of occasions that you were interested particularly or only in employment by the Alaska Steamship Company? [333]

A. Yes.

Q. That does reflect your attitude?

A. You see, they have almost a monopoly on that run. I want to be on the Alaska run.

Q. And this company has a near monopoly?

A. I call it a monopoly since the Alaska Transportation Company went out of business.

(Testimony of Horace W. Underwood.)

Q. I believe it was your testimony in answer to a question by Mr. Darwin that under duress, as you call it, you took other jobs. You mean by the term "under duress" the necessity that you and your family eat? A. That is right.

Q. Was your effort to secure both a permanent and temporary job with the Alaska Company, or just a permanent job?

A. I wanted to get a permanent job because a temporary job puts you down on the list, and you would never have a permanent job as long as there is a beach list.

Q. (By Trial Examiner Hunt): Because you would be down on the list?

A. You would be down all the time.

Q. After you wrote this letter of resignation to the union, Union's Exhibit No. 6, was your treatment in the matter of referrals by the union any different than it would have been if you had remained a member, or than the treatment accorded members of the union? [334]

A. You see, after I wrote that letter, I did not go near the union until the Alaska Steam wrote me that letter and told me to go there and register.

* * *

Q. Now, you made an entry, you made your last entry in an official assignment in December, 1949?

A. Yes.

Q. That was about the time you testified you

(Testimony of Horace W. Underwood.)

started contacting the company and dealing directly with the company? A. Yes.

Q. And later on during December you wrote the letter of resignation?

A. Yes; you see my dues would expire on the 31st of December. [335]

* * *

Q. (By Mr. Teu): Mr. Underwood, the last and final assignment slip that you signed, and I refer to Union's Exhibit—I don't know what number it is——

Mr. Darwin: No. 5.

Q. ——was December 21—December 1, 1949; is that correct? A. Yes, sir.

Q. Shortly after that, December 29, 1949, you resigned from the union? A. Yes.

Q. As manifested by Union's Exhibit 7, I believe.

Now, when you received the letter from the Alaska Steamship Company requesting you to go to the ARA hiring hall and register, did you register?

A. Yes, I did. [343]

Q. Do you recall when that was?

A. I received the letter on March 31.

Q. What year?

A. 1950, and I went there the following Monday.

Q. When you are registered, is it necessary to again register before you are given an assignment to a ship? A. It should not be.

Q. Well, is it? A. It is not, no.

Q. In other words, one registration is a continuing one until you are assigned?

(Testimony of Horace W. Underwood.)

Mr. Darwin: Just a minute. I am going to object to——

Mr. Teu: Strike the question.

Q. (By Mr. Teu): Is the registration a continuing one until you are assigned?

* * *

A. Yes, it is.

Q. Now, how many assignments did you have during the year 1949? Just the number?

A. Two.

Q. How many did you have during 1950?

A. None. [344]

* * *

Trial Examiner Hunt: Oh, yes, he was testifying about his reasons for resigning from the union. I think the assumptions of his testimony were that the two assignments on the Palisana would drop him 30 places a week on the active list, so that by reason of having taken those two assignments on the Palisana—you, Mr. Underwood, dropped down so far on the active list that you would not have been reached for employment on the Alaska run until the spring of 1951 had it not been for the Korean war?

The Witness: Yes, because I would not have gotten to the top so that I could take an Alaska freighter in 1950. And there wouldn't be any more until 1951 unless somebody quit in the middle of the season.

Trial Examiner Hunt: Because they don't ordinarily run in the winter months?

(Testimony of Horace W. Underwood.)

The Witness: Yes, sir; in the winter they don't run. [361]

* * *

Trial Examiner Hunt: In this same connection the witness testified there was a change in the rules so that he did not have a permanent assignment on the Palisana. Does the record reflect the precise change in the rules?

* * *

The Witness: The only—the old bylaws used to permit a man who jeopardized his position on the list by taking a temporary assignment to keep that temporary assignment if it became [362] permanent.

* * *

Trial Examiner Hunt: Let's see if I get it. Back before the convention of 1949, which Mr. Darwin said took place in San Francisco in 1949, there was a regulation of the American Communications Association, the predecessor to American Radio Association, which regulation provided that a man who had a relief job could continue in that job on a permanent basis if the job became a permanent one during his tenure in it in a relief capacity?

The Witness: Yes, sir.

Trial Examiner Hunt: At that convention the regulations were changed, so that when the job which had at one time been a relief job became a permanent job, the assignment to it as a permanent job would be from the top of the active list?

The Witness: They would start at the top.

(Testimony of Horace W. Underwood.)

Trial Examiner Hunt: That is right; the man at the top might not want it; is that right?

The Witness: Yes.

Trial Examiner Hunt: They would go down until they found a man who did want it?

The Witness: Yes.

Trial Examiner Hunt: And the man who occupied the job in a temporary or relief capacity might not be reached [363] for it, because he would have dropped 30 places a week during the time he had it in a relief capacity. Is that the idea?

The Witness: That is right. [364]

* * *

(Document heretofore marked as Union's Exhibit No. 7 for identification, received in evidence.)

* * *

(Document above referred to marked as Union's Exhibit No. 8, for identification, and received in evidence.) [366]

* * *

(Documents referred to marked for identification as Union's Exhibits Nos. 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 and 19, for identification, and received in evidence.) [367]

* * *

(Documents referred to marked for identification as Union's Exhibits Nos. 20 to 25, inclusive, and received in evidence.) [368]

* * *

(Document referred to marked Union's Exhibit 26 for identification, and received in evidence.) [371]

* * *

Trial Examiner Hunt: We will mark that No. 27.

(Document referred to marked Union's Exhibit No. 27 for identification and received in evidence.) [372]

* * *

Trial Examiner Hunt: The hearing will come to order. [376]

The parties stipulate that on April 12, 1950, the respondent company wrote to the respondent union at its Seattle office enclosing a letter of April 3, 1950, to the respondent company from Underwood, in which, according to the April 12, 1950, letter, Underwood had expressed the opinion that the union would discriminate against him.

The letter of April 12 concluded with the expression that the respondent company trusted that there would be no discrimination against Underwood or Hughes.

The parties further stipulate that on April 19 there was a response by Ralph Miller, the port agent, to the company's letter, in which Miller stated that Underwood and Hughes had been listed for employment, and that there would be no discrimination against them. [377]

* * *

Trial Examiner Hunt: The assignment list that is dated 12-31-49 in the upper right-hand corner

will be marked Union's Exhibit 28, and the assignment list dated 3-10-51 will be marked Union Exhibit 29 for identification.

(Documents referred to marked for identification as Union's Exhibits Nos. 28 and 29, respectively, and received in evidence.) [379]

* * *

CARL W. LUNDQUIST

a witness called by and on behalf of respondent union, having been first duly sworn, was examined and testified as follows: [381]

* * *

Direct Examination

By Mr. Darwin:

Q. Mr. Lundquist, you have seen the letter of resignation of Mr. Underwood?

A. Yes, I have.

Q. When did you get into this port as port agent?

A. I arrived here on the 13th of September, and took over the office.

Q. What happened that morning with respect to some mail that you received from the Labor Board?

A. There was in one of the daily mails—I think it was the second mail—a registered letter which I signed for inasmuch as Mr. Miller was out of the office, although it was addressed to him as Port Agent.

I opened it and saw it was—I think it is called a complaint or charge, filed with the N.L.R.B. by Mr. Underwood.

(Testimony of Carl W. Lundquist.)

Q. Did you do anything with respect to that?

A. Yes, I did. I checked with Mr. Miller as to what it was all about as soon as Mr. Miller returned to the office.

Q. Then what did you do, and Mr. Miller do?

A. Well, what we did actually—he outlined to me his transactions, shall we say, with Mr. Underwood, and his understanding of the charges and the background for the charges, so as to acquaint me with it. [382]

Then I immediately notified the national office I had received charges by mail.

Q. Did Miller say anything to you with respect to Underwood's resignation and the effect that it had upon his relationship to the union?

A. Yes, he did.

Q. What did he say?

A. That was when I first saw the resignation. Miller pointed it out to me in the file, and he said that this had been received—I believe it was on the 30th, the day following mailing, and that it had been referred to a port or a branch membership meeting, the next branch membership meeting, and the resignation had been accepted and since then Underwood was no longer a member of the [383] union.

* * *

Q. (By Mr. Darwin): What action did Miller tell you had been taken pursuant to Underwood's resignation?

(Testimony of Carl W. Lundquist.)

A. I am trying to remember it exactly as he told me. First of all, the letter was received and noted, and was called to the attention of the following week's membership meeting by Miller, who was port agent, and he called a meeting—

Q. I don't wish to interrupt you. You have given that. There was action taken by the membership?
A. That is true.

Q. What I was asking you about, what did Miller tell you with respect to the relationship of Underwood to the union? [385]

A. I was getting to that. I thought you wanted a complete answer on it.

Upon acceptance of the application, or, the resignation, rather, it became Miller's understanding, so he told me, that upon Underwood's own request, as indicated by the letter, and upon acceptance of that request through action of the membership meeting, Mr. Underwood was no longer a member of the union; he had no contact with the union; he did not wish to ship through the union; and he would not be called to the hall or had not been called for some time for jobs.

Q. Now, Mr. Lundquist, you have been with this union a long time, haven't you?

A. Yes, I have.

Q. You have been with it through the days of ARTA, the American Radio Telegraphers Association, back in 1932, through the ACA, and one or two other organizations, down to presently as port agent for the ARA—is that correct?

(Testimony of Carl W. Lundquist.)

A. I joined the original organization in March, 1933.

Q. You held office with this union, both in the ACA and, of course, the ARA?

A. That is true.

Q. You were secretary-treasurer for the ARA?

A. That is true.

Q. For how long a time? [386]

A. From the date of issuance of the charter on May 20, 1948, until the election of the new officers at the San Francisco early in February, 1949. I believe it was February 6th or 7th.

Q. And you maintained close contact and touch with the union, its affairs, and its national main office in New York?

A. I remained a functionary, you might say, until the first of May, 1949, and since then I have kept in close contact with the national office in New York, and the New York port office, the New York branch. [387]

* * *

Q. (By Mr. Darwin): Now, Mr. Lundquist, we had shipping rules prior to the writing up of the June 17, 1950, agreement between AMMI and the union in this case.

A. There were union shipping rules before that time.

Q. Those shipping rules were changed, were they not? A. They were changed.

Q. It is a fact, is it, that the effective date of those rules was June 20, 1950, when they were first

(Testimony of Carl W. Lundquist.)

ratified by the New York branch, and June 27, 1950, when they were finally ratified by the New Orleans branch? [391]

A. That is my understanding of it. Those are the dates, I believe.

Q. And, incidentally, the Seattle branch ratified the new shipping rules on June 21, 1950?

A. June 21, 1950, was the meeting date.

Q. So that, is it correct to say that when the July 14, 1950, agreement was signed between PMA and ARA, those were the shipping rules that automatically went into effect for the Port of Seattle?

A. Yes, those were the national shipping rules, and I assume when the contract was effectuated they became applicable in the Port of Seattle.

Q. Now, Mr. Lundquist, I show you what is now in evidence as union's Exhibit 28, and ask you with respect to the workings of the national list and the Seattle branch only, exactly what that exhibit shows. [392]

* * *

A. The list shows with regard to the Seattle branch—it shows the order in which men are listed in both the active and the inactive columns on the list, and that order in turn determines the order in which the men shall be called for assignment during the time this list is in effect, that is, for the following week.

I might point out, just to clarify something that may be confusing, that this list is dated for the week ending December 31, 1949. That means it was

(Testimony of Carl W. Lundquist.)

compiled at the close of business December 31, 1949, which would be a Saturday. It is always compiled as of Saturday. It is the week, or it is the list, rather, the official assignment list for the following week.

In other words, it goes into effect on January 2, although it may not be received out here until January 3, possibly. It further shows the sequence of names of radio operators listed as wishing to ship from Seattle. It shows the assignments made from the Port of Seattle for the week. It shows what is called the intra-list movements.

Q. What is an intra-list movement?

A. The intra-list movements comprise men changing port of availability. [393]

For instance, a man may have been on the Seattle list, and decide he will go to San Francisco. That is indicated the following week. He is not indicated as available in Seattle. It also indicates the men registering on the list from a ship or from another port. It indicates a man moving from the inactive column to the active column. I can't think of any other categories that the intra-list takes care of.

In other words, it lists all assignments of clearances issued other than those assignments to a job.

Then there is a fourth category, and that lists the men on standby for ships in the Seattle area—that is with respect to those men listed on the standby for ships in the Seattle area.

(Testimony of Carl W. Lundquist.)

That is the function of the lists, the purpose of the lists.

Q. Now, when you say it lists men for standby on the Seattle list, you mean by that that by looking at it you can determine the standby operators for Seattle ships as well as your ability to determine from this list standby for other branches as well?

A. That is correct.

Q. Is it true that Mr. Miller, your predecessor as port agent, and others simply worked from that list, which is Union Exhibit No. 28, to determine the status of men in this— [394] men on this Seattle port list, and did not make up a separate list as you do now? Is that correct?

A. I cannot say for all my predecessors. I do know that was Mr. Miller's practice, and I am quite sure it was the practice of both Mr. Sides and Mr. Travis, who in turn preceded Mr. Miller.

Trial Examiner Hunt: When did you succeed Miller?

The Witness: September 13.

Trial Examiner Hunt: September 13 of what year?

The Witness: 1950.

Trial Examiner Hunt: Then Miller and his predecessors, insofar as you know, made up the port list from the national list?

The Witness: Made up the port list?

Trial Examiner Hunt: Yes.

The Witness: No, they worked from the national

(Testimony of Carl W. Lundquist.)

list itself. If you will examine it, if you look at it, you will see notations——

Trial Examiner Hunt: All right. I stand corrected.

In other words, they did not make a port list; they went down this list with respect to individuals who indicated they wanted to ship out of Seattle?

The Witness: Yes, they thought that practice was satisfactory for the amount of shipping involved at that time. [395]

* * *

Trial Examiner Hunt: Did the national list contain the list of non-members during the period before the witness came here?

The Witness: Before I came here?

Trial Examiner Hunt: Yes.

The Witness: Some time before I came here, yes.

Trial Examiner Hunt: It contained the names of non-members?

The Witness: It would have—let me say it this way: It would have, if there were any registered. I don't know whether there were any registered before I came here. [396]

* * *

Q. (By Mr. Darwin): Will you explain, if you know, the incidence of assignments and shipping opportunities for radio operators in all ports, in all ports prior to about July 1, 1950?

A. In view of the fact that shipping was—I

(Testimony of Carl W. Lundquist.)

can't think of an adjective that is distressing enough to describe it—there were men on the beach, unemployed, here in Seattle and in New York and other ports for periods as long as five to eight months without being able to get an assignment because the shipping conditions at that time or for a long time up to—what date did you say approximately?

Q. July 1, 1950.

A. Yes, and for several years, ever since the slump in shipping which followed the cessation of hostilities—there was an oversupply of radio operators of—sometimes it reached a ratio of three to one for jobs available.

Q. When you say “cessation of hostilities,” you mean the end of World War II?

A. The end of hostilities of World War II.

Q. Now, will you explain to the Trial Examiner the significance and the methods of operation of our employment offices in each of the branches?

A. I don't know whether I quite understand your question. You mean the actual physical procedure of making an assignment slip and so [397] forth?

Q. We operate as an employment office, do we not, in each of the branches? A. Yes.

Q. And is it the custom of companies under contract with us and companies not under contract with us and any of the military services who need radio operators to call upon us for assignment of radio operators?

A. I think I see the intent of your question, or the information you want. Acting as an employment

(Testimony of Carl W. Lundquist.)

office, we do receive calls for radio officers, almost always by telephone, although occasionally by letter, if there is time enough and if the company wants to be formal enough about it, advising us that on such and such a date they will require the services of a radio officer for such and such a vessel. It may or may not be a vessel under contract with the union. That is, for instance, in the Port of Seattle there are a lot of companies shipping,—well, they call themselves steamship brokers or steamship agents, who do not of themselves operate ships but are agents for perhaps half a dozen companies which do operate ships. I can name one, the International Shipping Company, here in Seattle. They don't operate ships for their own account. They do, however, act as agents for I don't know how many companies. We receive calls from them for radio officers required for vessels operated under contract to us, and also occasionally—quite frequently, in fact, for radio [398] officers on vessels operated by companies not under contract with us.

We recruit for the military authorities or any other agencies which require radio operators. The most frequent employer in the Seattle area would be the Military Sea Transport Service, and Mr. Walker—I don't know his title but he has at least to do with assigning of radio officers to ships owned and operated by the MSTs. Very frequently he calls and asks us if we have men available. He does not always indicate what ships he wants the

(Testimony of Carl W. Lundquist.)

men for. He says, "I have eight or ten openings." Or, "I have an opening on a troop ship. Do you have anybody available?"

We have also had inquiries from the Coast and Geodetic Survey and from the United States Fish and Wildlife Service. I can't think of any other agencies.

Q. In addition to that, of course, we service 32 member companies approximately, in addition to the Alaska Steamship Company here in this area, do we not?

A. Under the West Coast contract?

Q. Yes.

A. Yes, and all ships of companies on the East Coast under contract. [399]

* * *

Q. Now, what is the means of the Seattle branch's knowing whether a particular man is available with respect to an application that might be required of him? Can you tell us that?

A. I don't know whether I quite get your question. One who has already filed an application?

Q. No, I am asking you at any particular time how do you know a man is available?

A. Oh, I know a man is available by means of the Seattle port beach list.

Q. We will get to the makeup of that in a few minutes. But before I do, I want to find out from you, is it a fact that any man, be he union or non-union, is required to come in and register on a slip that we have?

(Testimony of Carl W. Lundquist.)

A. That is correct. That information is compiled on the port beach list. That is why I referred to the port beach list. I don't look at the man's individual registration for employment, but the port beach list is made up on the basis [400] of registrations for employment which are filed either here in Seattle, or in other ports indicating that the man wants to ship from the Port of Seattle.

Q. And that indication as to which port a man wants to ship from, referring you again to Union Exhibit 28, is indicated by the alphabetical legends immediately after his name? Beginning with the first one, that would be what?

A. New Orleans or No. Because of the fact that the greater portion of the men ship from New York, and the list is made up in New York, where a man's name is not qualified by any indication, the individual—the indication is that he wants to ship from New York.

Q. On Union Exhibit 28 there is a number in the first column. Do you notice that?

A. Yes.

Q. What is that first number?

A. That is what is called the master list number.

Q. Will you run down the line on Union Exhibit 28 and show us as to which man would be assigned number one on the Seattle port list?

A. On this port list?

Q. That is right.

A. On this particular day?

Q. Yes.

(Testimony of Carl W. Lundquist.)

A. The first one I see indicated is A. Skold.

Q. The number is what on the list? [401]

A. 222.

Q. And in the margin there is an ink mark number one right next to that number. Is that the indication of that man's status on the Seattle port list? A. That is correct.

Q. Who put that mark on there, do you know?

A. Ralph Miller.

Q. And it is a fact that the number 222, the national port number, corresponding to the number one, as the Seattle port number, is coincident with the abbreviation, "SEA," meaning Seattle following Skold as the first on the Seattle branch list for that week? Isn't that right?

A. That is correct.

Q. And so, similarly, if one wants to find the component makeup of the port list in Seattle, he would have to go down the line from Mr. Skold's name to the end, and he would then be able to determine, first, the names of operators who want to ship from Seattle, and their respective relevant numerical order, is that right?

A. That is correct. [402]

* * *

Q. (By Mr. Darwin): I am grateful for the Examiner's picking up the point, which brings us to the need for you to define specifically what is meant by active, inactive, and employed, as we find them on the national list.

(Testimony of Carl W. Lundquist.)

Will you be good enough to tell us that?

A. Yes. The shipping rules define those three categories, and they are listed accordingly. Active means unemployed and actively seeking employment. Inactive means unemployed or possibly working ashore on some job not calling for the use of his radio operator's license. A radio officer [403] can register on the inactive list. For instance, he may not want to ship for a period of six months. He may be going to school. He may be starting a business or making some investments. Or he may be following the horses. Whatever he is doing makes no difference, but he does not want to be bothered by calls for jobs. His name continues to move up the list in the same ratio as the men on the active list, but he is not called for a job until he indicates he has become active. That takes a period of one week.

In other words, a man cannot come in today in accordance with out shipping rules and say, "I want to go active and be called." He has to wait one week. The reason for that is to prevent collusion between operators when a good job comes in. A man might be riding the inactive list for months, and maybe a friend of his will telephone him that he is getting off a choice job, so he should move over on the active list. Maybe the job is coming up tomorrow. That would not be fair to the others seeking employment. The employed column consists of those men who are working on their license, as the expression goes. They are afloat or ashore, con-

(Testimony of Carl W. Lundquist.)

tract or non-contract, MSTs or government job, or whatever job it may be which requires use of a radio operator's license.

Now, with regard to the active list, or with regard to the inactive list, we will say— [404]

Q. Before you get to that, is that the employed column which drops a man 30 numbers each week he is employed?

A. If he remains employed, on the next list his name appears 30 numbers lower than it did that week.

Q. And about the time Mr. Underwood left the Palisana, how long would it have taken a man normally to drop off the list as an employed member?

A. That would depend on what number on the list he was when he shipped out. A man might ship out with number 500—

Q. Assuming he shipped out from number one, how long would it take?

A. Number one, at the rate of 30 numbers per week—I don't know how good my arithmetic is, but there were approximately 900 names on the list at that time. That would be 30 weeks. [405]

* * *

Q. Incidentally, you had had a telephone conversation, as I recall it—not you, but Mr. Miller in your presence, had telephoned Mr. Underwood's home on the morning of September 13 to find out his whereabouts, after you, as you stated, saw that charge from the Labor Board, and your discussion with Mr. Miller? A. Yes.

(Testimony of Carl W. Lundquist.)

Q. What response did you receive, or Mr. Miller receive?

* * *

A. Mr. Miller stated that Underwood's daughter advised that [409] Underwood was still in Alaska, and was expected home in about two weeks. He was in a cannery, I should add.

* * *

Q. (By Mr. Darwin): What did Underwood tell you at that time?

Trial Examiner Hunt: This was on October 9th that he phoned you?

Mr. Teu: You were questioning about the call on the morning of September 13.

Mr. Darwin: We moved away from September 13. We are now at October 9.

Mr. Teu: I wanted to be certain where we are.

A. Mr. Underwood started off his conversation merely by the statement, "Hello, Carl. I am back." I was rather surprised because I did not think I knew him and he did not know me well enough to call me Carl in such a cheerful voice. Then there was some subsequent conversation. I don't remember the exact words, but I received the impression from it that Mr. Underwood wanted to be considered available for permanent assignments to vessels of the Alaska Steamship Company on the short runs only. By short runs, I assume of not more than three weeks' duration. [410]

* * *

Trial Examiner Hunt: All right. The witness

(Testimony of Carl W. Lundquist.)

got the impression from Underwood's remarks, which the witness cannot recall in detail, that Underwood wanted a short run with the respondent company.

The Witness: In the Alaska trade only.

Trial Examiner Hunt: All right. Now, what is a short run?

The Witness: A short run would be not more than three weeks' duration.

Q. (By Mr. Darwin): Now, had Mr. Underwood registered at all to your knowledge prior to October 7 and prior to the assignment slip of December 1, 1949, which is indicated on Respondent Union's Exhibit 5?

A. Prior to December 1, 1949?

Q. No, prior to October 7, 1950, and subsequent to the December 1st registration, being Respondent Union's Exhibit 5?

A. No, I had seen no evidence he had registered between [411] those dates.

Q. You asked Mr. Miller about it?

A. Yes, I asked Mr. Miller if he was on the list or where he was, and Miller's answer was he was in Alaska, and he had been so advised some time during the summer when he called Underwood's home over the phone to offer him an assignment, and he was advised by Underwood's daughter that Mr. Underwood had gone to Alaska.

* * *

Q. (By Mr. Darwin): Now, having had this

(Testimony of Carl W. Lundquist.)

conversation with Mr. Underwood on October 9— [412]

A. That was the phone call.

Q. Yes. You reflected that, did you, on the Seattle beach list?

A. Yes, I did. I noted or made the entry that Underwood had called and indicated he was available.

Q. That is the entry on the list? A. Yes.

* * *

Q. (By Mr. Darwin): Now, what is the next time you heard from Mr. Underwood?

A. Early in December he telephoned me again, on December 9.

Q. And what did he tell you at that time?

A. He then advised he was available for a permanent or a temporary assignment to Alaska Steamship Company vessels to Alaska.

Q. Now, Mr. Underwood was maintained on the Seattle beach list from the list of October 7, which is Exhibit 7, week by week by that?

A. He was carried over from list to list as they were typed, yes.

Q. And when he telephoned you on December 5, I think you said, to tell you he was then available for a permanent or a temporary assignment to the Alaska Steamship Company [413] vessels, did you make a notation of that on the assignment list?

A. Yes, I corrected the list to show his statement that he was available for permanent or temporary assignment.

(Testimony of Carl W. Lundquist.)

Q. And that is reflected on Union's Exhibit 8, is that correct? A. Yes.

Q. Now, I show you what are in evidence as Union's Exhibits No. 9, 9 to 19 inclusive, and ask you whether they are the Seattle branch lists from January 6, 1951—January 6, 1951, down to and including March 17, 1951, which is the last and current list?

* * *

A. Yes, that is correct.

Q. Now, would you be good enough to look at those exhibits and tell us and explain to us the numbers in the first column, the significance of those numbers, and the next two columns. I think one is marked "ready" and the next is "not ready." And then some comments in the last column without a heading.

Will you tell us what those mean?

A. Do you want to refer to any particular list?

Q. Take the first one, Union's Exhibit 9, and I think your explanation would be typical for all, would it not? [414]

A. I think it would, yes, except for the fact it does not show the assignment of any non-union members, which is indicated in some lists.

However, your reference was to the numbers and the two columns—

Q. That is right.

A. Well, the numbers, of course, are—they are in numerical order, two columns of them, beginning with number one and beginning with number 238.

(Testimony of Carl W. Lundquist.)

Those reflect the order of the men's names, the first column is the Seattle beach list and the second is the master list. The third and fourth columns both show the names of the men involved, and they are broken down into "ready" and "not ready."

"Ready" would indicate those men who I know I can call for just about any job at the moment, that is, at any time during the week.

"Not ready" indicates that they don't want to be called until they advise me. It may be a matter of three or four days, or it may be a matter of a couple of weeks. A man may be temporarily sick. He may have undertaken some enterprise he wants to finish.

Q. You notice on Union's Exhibit 9 the first name is N. Coll, and that is crossed out physically by an ink mark? A. Correct. [415]

Q. Then there is a notation, "Transferred to New York, active 1-8."

What does that mean?

A. That means on January 8 he came in in person and advised me he was going to ship from New York and he requested a clearance slip to that effect, and I issued it.

Q. All right.

A. And that made him available no longer in the Port of Seattle. Therefore there was a line drawn through his name.

Q. The next name with a line drawn through it is R. Frye, with the notation in the last column, "Assigned SS Mormacmoon 1-10-51."

(Testimony of Carl W. Lundquist.)

What does that mean?

A. That means that on January 10, 1951, he accepted an assignment as radio officer on the SS Mormacmoon. Obviously, he became employed, and no longer unemployed and available for employment.

Q. And similarly, without going into details, there are references in the last column with respect to names that are crossed out and others with no crosses through the names, which indicate some disposition for that week as to some of those names?

A. Correct.

Q. Now, you notice at the bottom of the page, you have listed five names? [416]

A. Yes.

Q. At the head of which is "H. Underwood"?

A. That is correct.

Q. And you have the legend, "non-member perm. or temp. to Alaska." What does that mean?

A. That means Underwood is not a member of the union, and that he is interested in only a permanent or temporary assignment to Alaska.

Q. Then you have Dallas Hughes, V. M. Cotter, and two other names, Caldwell and Mather?

A. Yes.

Q. Does that mean there that that was their respective standings on the list as of that time?

A. That is correct.

Trial Examiner Hunt: What do the initials "PCM" stand for?

The Witness: Permit card members. They are just applying for membership in the union.

(Testimony of Carl W. Lundquist.)

Q. (By Mr. Darwin): What is the practice under our shipping rules either with respect to a member of the union or a non-member who wants to ship out of a particular branch insofar as the requirements for him to fill out an application blank is concerned?

A. Which application blank are you referring to? For membership? [417]

Q. No, I am referring to the employment application.

A. That is governed by the shipping rules which specify that any unemployed radio officer who wishes to obtain employment through the facilities of the union must so indicate by filling out the proper form.

Q. Has Mr. Underwood at any time come in to you and filled out any application to ship out?

A. He has not.

Q. With the exception, of course, of the hearing we held there last month, where his number came up in the regular course, and you assigned him to a job?

A. That was not an application to ship out; that was an assignment to a job—two different things.

Q. Oh, I see. So that, in effect, even today Mr. Underwood has not complied with the rules which you impose upon members and non-members alike with respect to applications to the union to be assigned to a vessel, is that right?

A. Not to my knowledge.

Q. Your answer "not to my knowledge:" means

(Testimony of Carl W. Lundquist.)

that he has not come in to fill out such a blank that you require indiscriminately of members and non-members?

A. He has not come in to me to fill out such a blank, or to anyone else, and there is no record of his having done so anywhere else.

Q. That you know of? [418]

A. That I know of, clearly, because if he had done so, his name would appear on the national assignment list.

Q. What is the practice with respect to a non-union man who comes in and does fill out an application for a job insofar as the transfer of such application to the national office is concerned?

A. It is transferred to the national office just the same as an application of a union member.

Q. Now, I hand you Union Exhibit 11, and you will notice that you have similar crossings with respect to men in the upper portion of the list, and then you have a list headed by "H. Underwood," with the names of Cotter and Mather crossed out?

A. That is correct.

Q. What does that signify?

A. That signifies that those men were assigned on the particular dates indicated following their names to vessels—Cotter to the SS Newcastle Victory on January 27, 1951, and Mather to the SS Green Star January 24, 1951.

Q. Now, why was it, why wasn't Underwood assigned to either one of those vessels although he is ahead of either Cotter or Mather?

(Testimony of Carl W. Lundquist.)

A. First of all, neither of those vessels was operated by Alaska Steamship Company, and, secondly, they were not in [419] the Alaska trade, and thirdly, they were not going on short voyages.

Q. And those were the specifications and limits which Mr. Underwood to you had imposed as a condition to your assigning him to any job, is that right? A. That is correct.

Q. Now, you recall, and the Trial Examiner made a statement in that connection earlier today, that at the last hearing on February 27 held here, Mr. Underwood was sent out on a job. Do you recall that? A. Yes.

Q. What job was that?

A. The Steamer Pacificus.

Q. And will you describe the circumstances under which he was assigned to that job? What I am asking is, did his number come up? Was that his regular turn for assignment?

A. It was his turn for assignment, yes.

Q. Previously to that had he indicated to you that he was ready for any job, temporary or permanent, on any vessel? A. No, he had not.

Q. And that was the first time that he had accepted a job other than one in the Alaska trade with the Alaska Steamship Company as a permanent job?

A. I will have to correct myself. He had indicated a short while before that that he would accept a temporary [420] assignment to the SS China Mail, but was unable to do so.

(Testimony of Carl W. Lundquist.)

Q. Why?

A. Because, as he advised me, he had been subpoenaed to appear before this hearing.

Q. Now, finally, before I leave the subject, I show you Union's Exhibit 16 with H. Underwood's name with a red line through it, and tell us whether that indicates that he had been assigned to the SS Pacificus some time during the week of the 17th of February, when the list was made up?

A. Not the 17th of February, no. The list is the one for the week ending February 22.

Q. That is right.

A. And the assignment was made on February 27, of Mr. Underwood to the SS Pacificus in Seattle.

Q. Now, look at Union's Exhibits 17, 18 and 19. Underwood's name does not appear any more, does it? A. It does not.

Q. And what is the significance of that?

A. Presumably that he is employed.

Q. You mean presumably, since you knew he had been sent out to the SS Pacificus and he had not reported in to you that he was again available for another job?

A. He had not subsequently registered for employment.

Q. Now, assume Mr. Underwood's job ended tomorrow, would it be necessary for him to come in and register for employment [421] before you could send him out for another job?

A. In accordance with the rules, it would be.

(Testimony of Carl W. Lundquist.)

Q. Then what would be done with the registration slip? Would it be sent East?

A. It would be sent to the national office for compilation in the following assignment list, the same as all others.

Q. Meaning union and non-union members alike?

A. Correct.

Q. Now, Mr. Lundquist, I show you what is now in evidence as Union's Exhibits 20 to 25, respectively, and taking Exhibit 20, will you tell us what that indicates?

A. Exhibit 20 is a report on a form used by the union called a job report sheet. These job report sheets are used in all the ports to indicate the request for a radio officer for a ship, and the particulars pertaining thereto, such as name of the ship, the company operating the ship, the date the job begins, where the man is to report, where the ship is located, date of arrival, date of sailing, possible destination, and then at the bottom there are several spaces, several lines left for any other notations that may be required, and finally a space in which is to be indicated the name of the radio officer assigned, the date and his union status.

At the top there are also some provisions for indicating who reported the job and the date on which it was reported and also who was the [422] dispatcher, and the category of the job.

Q. Now, will you take, for instance, Exhibit No. 20 and tell us what "reported by"—"Meland reports ill."

(Testimony of Carl W. Lundquist.)

A. That indicates, the two lines together, "reported by" and "date" means that on December 22, at 8:45 a.m. Paul Meland reported he was ill and he would be unable to make the voyage on the Coastal Monarch, and he requested I try to arrange for a relief operator for him.

On that basis I typed in at the line for the ship, "Coastal Monarch (relief)" to indicate it was not a permanent assignment.

Q. Now, I notice the probable sailing date in the right-hand column near the bottom is marked "Friday." What is the significance of that?

A. Well, he apparently indicated to me that he expected the ship to sail on Friday, or it may—there is a possibility of conflict. I don't think it is too important. It may be the information may have come from the steamship company. I cannot in accordance with the contract take a radio officer's word for it that it is agreeable to the company that he take a trip off. It must be mutual between the company and the operator.

Q. Was there any occasion—

A. I was going to say, therefore I have to check with the company as to whether it is permissible with them for [423] Mr. Meland to arrange for a trip off. It could be the company informed me the ship was to sail Friday.

Q. Now, was there any occasion for haste in filling this job?

A. To the extent the ship was signing on that morning. The instructions were that the man was

(Testimony of Carl W. Lundquist.)

to be aboard the ship at Pier 42 to sign on that morning.

Q. At 9:15 a.m.?

A. No, they usually sign on at ten. 9:15 is when they contacted the company.

Q. And this job was to be filled in three-quarters of an hour? A. Signing on time was ten a.m.

Q. What experience have you had in reaching Mr. Underwood either by telephone or telegram with respect to the time involved where he lives on Vashon Island?

A. Telegrams have taken a considerable time for delivery. Sometimes they get through fairly soon. It may be an hour or two hours or four hours. I don't know. With regard to telephone calls, I have had no occasion to make a telephone call to Mr. Underwood.

Q. Have you had occasion to make one to Mr. Sweeney, who also lives on Vashon Island?

A. Not Sweeney, but other radio officers who did live on Vashon Island, and who have complained of telephone service, [424] that it is practically impossible.

In the case of one assignment, I was actually unable to reach the man, Mr. Casey, in time for him to accept the job. He would have accepted it, he told me later on when he came in. Had I been able to get him by telephone, he would have accepted the assignment.

Q. And is that the reason that this job was not referred to Mr. Underwood, that you could not reach

(Testimony of Carl W. Lundquist.)

him in time to send him on in three-quarters of an hour?

A. The time element was the controlling factor there.

Trial Examiner Hunt: Which particular job is that, please?

Mr. Darwin: That is on Union Exhibit 20.

The Witness: The Coastal Monarch.

Q. (By Mr. Darwin): Now, turn to Union Exhibit 21. Will you look at that for a moment and explain the circumstances which required that you assign a man quickly to that job?

A. Yes. That job sheet indicates that I first heard of the job being open on December 28 through Mr. Allgrunn in advising me he was not returning to the ship. The ship in question was the steamer Baranof, which is a passenger vessel, and that vessel sails on a regular schedule.

Mr. Allgrun had been chief radio officer on that ship for quite some time, and had previously arranged to take time off. And under what is or what has already been described [425] as the standby system it came time for the ship to sign on for this voyage, and on the morning of the 28th when the ship was signing on, immediately upon arriving at the office, I contacted Mr. Allgrunn, who lives in Tacoma, and is not always easy to contact because sometimes he is at home and sometimes he is not. He is a man who takes a little while to make up his mind, which is his privilege, but it makes it a little difficult in getting a man to replace

(Testimony of Carl W. Lundquist.)

him, because I have to worm out of him, "Are you going to sign on or not?" He finally said he was not going to sign on, and finally, at 9:00 a.m., the record shows, I called Mr. Felton of the Alaska Steamship Company and advised him of that.

Mr. Felton said, "All right. Send somebody else down.

Q. How soon——

A. The ship was signing on at 10:00 o'clock that morning.

Q. Under those circumstances were you able to reach Mr. Underwood?

A. Within one hour I couldn't take the chance. I had no guarantee that a telegram would get through to him in one hour or two hours. Incidentally, I might elaborate that here is an instance where I had Mr. Casey's name listed with no phone. I was unable to get him. That was the first thing in the morning.

Q. And that indicates that Newbill accepted and that he took the job? [426]

A. He was the next man interested. There may have been others in between. If so, I would have made a notation, "So-and-so declines." But he was next in line.

Q. Now, you do the best you can in running your employment office and filling these jobs under the exigencies that exist in filling them rotationally and with fairness to union and non-union operators applying for jobs, is that right?

A. I think so, yes.

(Testimony of Carl W. Lundquist.)

Q. Well, you know it as a matter of fact?

A. Well, I do my best, yes.

Q. Incidentally, there is a ferry running between here and Vashon? A. Yes?

Q. Do you know how often each day?

A. I haven't the slightest idea.

Q. It takes some time——

Mr. Teu: He says he hasn't the slightest idea. How can he speculate as to whether it would take some time? He said he hasn't the slightest idea.

Trial Examiner Hunt: All right. You need not argue it. I will sustain the objection.

Q. (By Mr. Darwin): Have you at any time talked to Mr. Underwood as to the length of time it takes? A. Not with Mr. Underwood.

Q. Have you talked with Mr. Casey? [427]

A. Yes.

Mr. Teu: I object.

Mr. Darwin: Mr. Casey lives on Vashon Island too, doesn't he?

Mr. Teu: I object, Mr. Examiner.

Trial Examiner Hunt: He may answer.

A. Mr. Casey does live on Vashon Island, to answer the question first, and he has indicated to me that transportation facilities down there are not of the best. When he comes to Seattle he more or less makes an expedition of it.

Q. Turning to Union Exhibit 22, it is headed, "Reported by newspaper reports." Will you tell us the circumstances under which you have to make that assignment quickly?

(Testimony of Carl W. Lundquist.)

A. This was not necessarily made quickly.

Q. Well, tell us about it.

A. The record will show that there was considerable time on that. The first indication of that job being open was a newspaper report which stated that the Alaska Steamship Company had bought the Edmund Mallet. You may notice on the job report sheet the name Edmund Mallet is crossed out and underneath is the name Iliamna. That newspaper account was on January 22. Knowing that the Alaska Steamship Company would normally call us for a radio officer for that job because it was in this area, I made a job sheet on which I wrote only such facts as where I got the information, [428] the name of the company and the ship.

On January 29 at 2:00 p.m. Mr. Felton of the Alaska Steamship Company called me and advised me they wanted a radio officer on the ship the following day. I did not call Mr. Underwood for that job because—despite the fact that it was an Alaska Steamship Company vessel—because of the fact that Mr. Felton advised me or confirmed previous information I had that that vessel was going under a four-months charter to the Pacific Far East Line.

Q. I see.

A. Mr. Underwood indicated he was not interested in a long voyage. He wanted to be home at quite frequent intervals.

Q. And for that reason you did not contact him about that job? A. I did not call him.

Q. Referring to union Exhibit 23, will you tell

(Testimony of Carl W. Lundquist.)

us the circumstances of the assignments of Allgrunn?

A. Well, that was an occasion somewhat similar to the previous ones in which Mr. Trevethan called me up on the morning of January 25, 1951, advising that he was in port on the steamer Nadina, and he would like to have a trip off if I could arrange—I am sorry—two trips off, if I could arrange for a relief operator. I said I would do my best, and asked him when the ship would be signing on. He said it was signing on that morning. He had not been able to call the [429] day before because the ship got in after the office closed.

I called Mr. Felton's office—the record does not show whether I spoke to him in person—at ten a.m. and advised him Mr. Trevethan wanted to make such an arrangement. They approved it, and thereupon I was in position to call a radio officer. They also confirmed the fact that the ship was signing on that morning, and that they did want a man to stand by that morning, and he was to report to Pier 42. So there again time became a matter to be considered.

Mr. Allgrunn happened to be in the office that morning, and he was in a position to be offered that job, and he accepted it and went down immediately. I presume he did immediately, because he left the office and went down to the ship and signed on.

Q. I will ask you to take a look for a quick minute at Union's Exhibit 11, which is the Seattle beach list of January 20, and ask you whether Mr. Allgrunn in addition to the reasons you gave for

(Testimony of Carl W. Lundquist.)

non-assigning Mr. Underwood did not also precede Mr. Underwood on the list?

A. He preceded him—let's see—this is a January 20th list—

Mr. Geisness: He lost his place.

A. (Resuming): Oh, yes, Allgrunn preceded Underwood on [430] that list.

Trial Examiner Hunt: How can you tell it?

The Witness: By his order on the list—in the typed order on the list. I started to elaborate by saying, however, he had not been employed longer than Mr. Underwood had at that time. He had gotten off the Baranof 90 days prior to that. In fact, it was exactly 90 days he was off the Baranof.

Q. (By Mr. Darwin): So except for the circumstances under which you would have had to make a quick assignment, would Mr. Underwood have been called?

A. He would have been eligible for that job, and he would have been called.

Trial Examiner Hunt: Let me pose something here that I do not understand.

Is it your testimony that Allgrunn did precede Underwood in order of rank on Union Exhibit 11? I use the word "rank" in the sense of priority for referral.

The Witness: It was my statement he did not.

Q. (By Mr. Darwin): Would Mr. Underwood have been called first except for the need to fill the job quickly? A. Yes, he would.

Q. Now, turning to Union Exhibit 24, in the

(Testimony of Carl W. Lundquist.)

first place you notice at the top "Reported by Healy (advised not rejoining)." That does not mean rejoining the union, does it? [431]

A. No. All notations on this pertain to the job.

Q. I see.

A. That means that the incidents pertaining thereto were that the Coastal Rambler, which had been temporarily chartered to the Grace Line some time in the fall, and Mr. Healy had been permanently assigned as radio officer for some time when the ship was chartered to Grace Line, and indicated he did not want to make that voyage down to Central and South America.

So he arranged for a trip off, and he took a standby clearance, and Mr. Sweeney was assigned in his place. The vessel came back, and Mr. Sweeney reported back in and asked if Mr. Healy was going to rejoin the ship—he further advised me—this was on the 30th—he further advised me—

Q. In January?

A. On the 30th of January, that there was some question that the ship might lay up for a while, it might not go into immediate service for the Alaska Steamship Company. So at two p.m. on January 30, I called Mr. Felton, and he advised me that the ship would not lay up, and that the job would begin on the 31st. Thereupon it was my duty, to contact Mr. Healy, who was on standby status for that job, and advise him to return to his ship on the 31st, or arrange for further standby and further relief as-

(Testimony of Carl W. Lundquist.)

signment because his standby [432] assignment was not limited to any particular number of days.

I was not able to get Mr. Healy that afternoon, and the notation shows he advised me on the 31st the first thing in the morning that he was not going to rejoin the ship, and advised me he had obtained employment ashore, and he was not interested in re-joining the ship.

Q. That was on the morning when the signing on was supposed to occur?

A. That is correct. I did attempt to get him on the afternoon of the 30th, but I was unable to raise him. I had to leave a call for him.

Q. You have already explained that. And it was under those circumstances that you did not find it feasible to offer Underwood the job?

A. That is correct. It is my understanding of our obligation to the steamship company that when they say they want a man down there at a certain time to sign on, it is up to us to get one down there if we possibly can.

Q. As a matter of fact, you used the phrase, "beating the bushes for the last two or three months for men to take jobs," is that right?

A. That is correct.

Q. That is union or non-union?

A. Union or non-union.

Q. Permit card holders or no permit card holders? Is [433] that right? A. That is right.

Q. As a matter of fact, Mr. Lundquist, since the Korean war you have even had to assign in some

(Testimony of Carl W. Lundquist.)

cases men who are not even licensed under the FCC?

A. That is not permissible; only in MSTs.

Q. I was going to finish. To MSTs, who are unwilling to take men unlicensed, is that right?

A. That is correct.

Q. As a matter of fact you have also had occasion, too, of necessity, to telephone the San Francisco branch of our union?

A. I have.

Q. To get people to come up for jobs, union or non-union, is that right?

A. That is true.

Q. Turning finally to Union Exhibit 25, will you tell us the circumstances of that assignment? I notice that you say on the third line, "Begins February 6. About 35-day trip."

A. That is right.

Q. Was that one of those long trips which you understood Mr. Underwood held himself unavailable for?

A. Yes, though I did explain my understanding that a short trip would be a three-weeks' trip. Based upon the information received from him, I would have been—I would [434] have given him the benefit of the doubt concerning the length of the trip. There again the job report comes originally from the radio operator the first thing in the morning of February 6th, asking for one trip off, and he advised me that the ship apparently was going to make a turnaround. At least, the job was open that day, February 6th, and he advised me it would be a 35-day trip. I again called Mr. Felton's office and questioned them concerning the situation whereby

(Testimony of Carl W. Lundquist.)

there was a possibility of a different radio officer going out on the following trip, and they agreed.

“All right. If that is the way the operator wants it, it is all right. Go ahead and assign him.” So I had to do my best to assign an operator. I may say here—I think I should say here, to clarify the situation, that there have been cases, there have been three cases recently where radio officers with the Alaska Steamship Company have come in and asked for relief, and I have told them there is nobody available, and they will have to stay on the job or get off permanently and let the thing lay in my lap, and have somebody else assigned. That is because of the manpower situation.

Under those circumstances the men have agreed to remain with the ship.

Now, there again, it was a case of the company wanting a man down there at the dock to sign on, according to my information [435] and the information given me, and I can't risk ignoring the dissatisfaction of the company with regard to service the union renders them as to assignment of radio officers. I had to use my own discretion as to who I could call of the three men I did call, which were Oku, a transient. He was staying in a hotel in Seattle. He came down at nine o'clock. Sweeney was staying in Seattle and Ashley was staying in Seattle. Ashley accepted the assignment. He came down immediately and took the assignment and went within 20 minutes.

Trial Examiner Hunt: What is the meaning of

(Testimony of Carl W. Lundquist.)

the term "deferred list," as it appears on some of these exhibits, referring particularly to Union Exhibit 17?

The Witness: "Deferred list" is a category which stems from the old constitution prior to the one now in effect pertaining to status of membership under the procedure for reinstatement into membership of a former member who has resigned from the union.

At one time or another under the old constitution such member was accepted back into the union in accordance with shipping conditions.

In other words, the union did not feel it was fair to such member to say, "All right; we will reinstate you right now. But you may have to stay on the list six months and pay dues in the meantime without a chance of getting a [436] job."

Therefore a system was worked out whereby these men were placed on an available list for assignment, but they were not actually reinstated into the union nor were they required to pay dues into the union until such time as they were free to accept an assignment.

At that time their new membership or reinstated membership became effective.

Now, under the present circumstances, men who resign under the present constitution are accepted back upon payment of a reinstatement fee and dues. However, those who resigned under the old constitution—the union doesn't feel it would be fair to tell those men, "You can go and come back without any reinstatement or back dues or anything else," at

(Testimony of Carl W. Lundquist.)

that time, and now tell them, "You have got to pay a reinstatement fee."

Therefore, they are permitted to reinstate themselves into the union under the conditions in effect when they left the union. It is a term used more for the benefit of the rank and file members who come into the union hall and look at the list and want to know where did these fellows come from, and who——

Q. These lists are posted—oh, I am sorry. Did I interrupt?

A. Go ahead and ask the question. [437]

Q. Are these lists posted, both the national lists as well as the port lists each week at a prominent place in the union hall?

A. I have them sitting right on my desk, on top of the desk, where any man who comes in to ask, I hand it to him and say, "There it is."

Q. Have you ever made it a condition for registration for employment that if a man came in, he had to join the union? A. No.

Q. Have you ever made it a condition for registration or assignment for employment of Mr. Underwood that he join the union? A. I have not.

Mr. Darwin: Now, pursuant to my request——

Trial Examiner Hunt: Is it the substance of this witness' testimony that on Union Exhibit 11, for instance, although Underwood's name does not appear with a number beside it indicating a place on the list, in practical effect Underwood was number one on the list?

(Testimony of Carl W. Lundquist.)

The Witness: I don't know whether he would be number one. I don't know whether he would precede these two. Both of these men have been unemployed for a considerable length of time, over a period of a year, and they are well up on [438] the list.

Trial Examiner Hunt: Griffin and Ember in the column, "not ready" on Union Exhibit 11. Then on Union Exhibit 12 it is indicated that Dittberner took the assignment on the Coastal Rambler. Was it the substance of your testimony that Underwood, whose name appears near the bottom of Union Exhibit 12 without a number opposite it, was in fact a rank above Dittberner?

The Witness: Yes, as to the length of employment, yes.

Trial Examiner Hunt: I should think this witness should be asked why Underwood was not given a numerical rating, and why his name appears in a limited group at the bottom of a number of these exhibits.

Q. (By Mr. Darwin): Do you want to explain it?

A. Do I understand it as a question?

Trial Examiner Hunt: I suggest to counsel that you put it as a question.

The Witness: That is why I hesitate.

Mr. Darwin: That is a question.

A. If it is a question, all right. The answer to that question is what I have already stated, that Mr. Underwood has never come in to me or to any-

(Testimony of Carl W. Lundquist.)

one else in the office while I have been here or at any time prior that I know of and registered to go on the assignment list. The list is made up and assignments are made in accordance with a set of rules which is national in scope, and which is definitely just as [439] applicable to the Seattle branch as anywhere else. I have no right to deviate from those rules, and neither has any other port official who may place Mr. Underwood's name or anyone else's name on that national list, unless such applicant for employment as a radio officer specifically fills out—and all he has to fill out is his signature because I fill in the rest of the data indicating his name, the port where he wants to ship from, and the date he goes on the list.

Now, because shipping, being what it is, and because I have no desire to persecute Mr. Underwood or anybody else that I can think of at the present moment, I felt that I was bound in my own conscience to hold him available for assignment in some manner, even though I could not list him on a master assignment list, and I had to figure out to my own satisfaction and in my own mind according to the facts I had, what I could ascertain from Miller and Underwood, as to his length of employment, his possible registration date, and how that would affect him on the list.

Mr. Underwood would not agree with that, and he would never fill out an assignment slip which would permit his name going on the [440] master list.

(Testimony of Carl W. Lundquist.)

Q. (By Mr. Darwin): Looking for a moment at Union Exhibit 5, December 1, 1949, you will notice that Underwood indicated on that date that he was going to the Seattle active list from the Palisana?

A. That is correct.

Q. In between that time had it come to your knowledge he was employed? A. It had.

Q. Employed where? In the cannery?

A. Yes. [441]

Q. What is the rule that you apply indiscriminately to union and non-union members alike under our shipping rules, Union Exhibit 1, with respect to a registration of a man with the union hall after he has been employed?

A. The shipping rules are very specific in stating that a man coming off a job or changing his category on the assignment list in any way must fill out a new form indicating that.

Q. An application?

A. An application requesting that new status, whatever it may be.

Q. Now, it having come to your attention that Mr. Underwood was employed by a cannery until some time, I believe, in the middle of October, October 9 or some such date, is it the requirement under the shipping rules that he come in and register again?

A. Providing he wants an assignment, yes.

Q. That is what I am driving at. And you have already testified he never did come in to apply for a job?

(Testimony of Carl W. Lundquist.)

A. Not to apply for a position on the list, [442] no.

* * *

Q. (By Mr. Darwin): Now, does a radio operator have to have certain qualifications before you and the Seattle employment office will refer him to a job to any ship owner? A. Oh, yes, he does.

Q. How many qualifications, how many categories of qualifications that you know of do you have to be concerned about?

A. Well, at least three.

Q. Well, give us the first one?

A. The first requirement is that the person must hold a license as a radio operator issued by the Federal Communications [455] Commission, a second-class or better license,

The second requirement is and had been for quite some time that he must also hold a radio officer's license issued by the United States Coast Guard. That regulation became effective in the summer of 1948.

* * *

Mr. Darwin: The line of questioning and the answers I hope to elicit from Mr. Lundquist will develop that there are at least three prerequisites of qualifications at a particular [456] time, on a particular day, which an employment office dispatcher or a port agent must know about before he can dispatch, under government regulations, any operator to a job of the kind involved in Mr. Underwood's case, and it has nothing to do with the personal

(Testimony of Carl W. Lundquist.)

competency of handling the equipment by Mr. Underwood or anybody else.

Trial Examiner Hunt: All right.

Q. (By Mr. Darwin): Now, you have been interrupted by Mr. Teu, and you have given two categories. What was the third?

A. The third category is what is known as a loyalty screening. That requirement went into effect on the 1st of October, 1950.

Q. Do you know the basic regulation of that?

A. Of the last requirement?

Q. Yes.

A. The basic regulation of that requirement is that a person shall not be——

Q. No. A. Oh, I am sorry.

Q. I stopped you from answering. Go ahead.

A. He must not be a bad security risk.

Mr. Darwin: May I ask the Examiner to take judicial notice—I have always thought it should be administrative notice and judicial notice of the contents of the President's [457] Executive Order—and I am sorry I don't have the number—issued some time prior to October 1, 1950, and particularly, after the Korean war flared up, under which the United States Coast Guard is the agency by such executive order to inquire into the security of seamen, including radio operators sailing upon American flag-flying vessels.

The Executive Order was implemented by regulations promulgated by the United States Coast Guard, and it has been from about October 1st

(Testimony of Carl W. Lundquist.)

amended several times to include all waters upon which American flag-flying vessels sail.

First the regulations covered only offshore between here and the Pacific Korean waters. Subsequently, by amendment, the regulations requiring security checks by the Coast Guard have now and by the latest amendment of January 30, 1951, been made effective to include sailings of seamen not only offshore but coastal waters, intercoastal, intercoastal meaning between the coast on the Pacific and the coast on the Atlantic, and Gulf ports and inland waterways.

Mr. Teu: You request that he take judicial notice of all the matters covered in your statement?

Mr. Darwin: That is right. I will also ask the Examiner to take judicial notice of the Congressional Act—I think it is 526 or some such number. I don't have it. I will furnish it some way if the General Counsel won't object. I will be glad to furnish it in the form of a letter [458] when I get back to San Francisco, with a copy to you, if the Examiner will accept it that way. They are matters which you can go into in the brief.

I will make a quick reference to the Congressional Act about the middle of 1948, which was much before Korea was ever thought of, requiring a radio operator, who was by that Congressional Act made an officer aboard a vessel comparable to the mate, first mate, chief engineer, and so on.

By that statute the Coast Guard was required to screen all radio operators for security—not security

(Testimony of Carl W. Lundquist.)

—yes, I beg your pardon; they were required to check their radio operators for security and for other reasons as to whether or not they were entitled to get by the Coast Guard a license as a radio officer.

The first requisite which Mr. Lundquist referred to is, of course, the Federal Communications Commission license applying to Class A and Class B licenses, or first class and second class licenses.

Q. (By Mr. Darwin): Now, as to each of the categories that you mentioned, is it the duty of an employment agency such as the Seattle branch is, to make inquiry before a man is dispatched to a job? A. Yes, it is.

Q. Now, if a man does not come up to physically register [459] for an assignment on a job request form or job application blank, have you any means of ascertaining any one or all three of these prerequisites before you send the man to a job?

A. The only way I could make sure would be to see the documents themselves which the man would bring in when he registered.

Mr. Darwin: At this time, Mr. Examiner, I direct your attention to General Counsel's Exhibit No. 4, Section 2, under Hiring, the third paragraph (Reading):

“Preference shall be given to the radio officer longest unemployed who is qualified, competent and satisfactory, and who can present proof of previous employment on vessels of one or more of the companies under agreement with the Association, and

(Testimony of Carl W. Lundquist.)

who has worked as radio officer on U. S. flag vessels during the two-year period immediately preceding signing of this agreement and who has experience on a job similar to that which is offered.”

The emphasis is on qualified, competent and satisfactory.

The next paragraph, “The Association—” —in this instance the Association referred to is the ARA —“agrees to maintain, administer and operate its employment offices and to apply the aforementioned preferences in accordance with the laws, and assumes the sole responsibility therefor.”

And the emphasis there is that the Association is to [460] administer the employment office in accordance with the law and assumes sole responsibility therefor.

The next paragraph, “When filling vacancies all radio officers shall produce official assignment clearance from the Association employment office.”

And you will observe, Mr. Examiner, throughout this agreement, which is GC Exhibit 4, it says “Radio officers” as distinguished from the first agreement of December 3, 1948, which was No. 3, and which was in effect prior to the Board’s order in April, 1950, which used the word “members”—will give preference to members.

And I also direct your attention, Mr. Examiner, and I do it at this point of the transcript because the reader of it would find it helpful at this point—I direct your attention, Mr. Examiner, to Union’s

(Testimony of Carl W. Lundquist.)

Exhibit No. 1, the assignment rules, particularly rules 5-a, 5-b, 6-a, 6-b, and 6-c.

I think I ought to get it physically into the record, with your permission.

Rule 5-a provides, "All radio officers desiring to obtain employment shall register for the assignment list, and shall be designated as active for a specific branch hiring hall of the union."

Rule 5-b: "Radio officers shall be registered on the assignment list as of the day and hour application is received [461] irrespective of the date the radio officer registering left his last job."

Assignment list forms, Rule 6-A, "A radio officer registering on the assignment list shall fill out in full an assignment list application form provided by the union."

Rule 6-b: "Each branch hiring hall shall forward all assignment list applications to the office of the secretary-treasurer."

Rule 6-C: "The files of the secretary shall contain a copy of the official assignment list applications filed by each radio officer."

Q. (By Mr. Darwin): Now, Mr. Lundquist, reference in these rules as I have read them to you, to assignment lists, has reference to which part of Union Exhibits 28 and 29?

A. That reference will be to the first part.

Q. All right. Now, did you, at my request, prepare a list of non-union radio officers from the national lists of all of the union branches between June 29, 1950, and February 17, 1951, the latter

(Testimony of Carl W. Lundquist.)

date being the date closest to the holding of the hearing here in Seattle last month?

A. Yes, I made such a list.

Q. Now, why did you select June 29 as the starting point?

A. That date was the first date on which the assignment of a radio officer not in the union appeared.

Trial Examiner Hunt: That follows the promulgation of [462] the new regulation and shortly precedes execution of the present contract, is that the point?

* * *

The Witness: No, not necessarily. I did not choose the date with that in mind. There may be a coincidence there.

But prior to that date the shipping conditions had been such that non-union members or union members—non-union members found it more practical to apply for employment at ports where there were no union employment offices. There was a considerable surplus of men over the jobs available, and the union members wishing to ship through the union facilities registered and were available at the ports where the union maintains an employment office.

Now, there are only six of those from which they could ship. There are six employment offices, whereas there are many more than that number of seaports on both coasts. Competition for employment by a radio officer not a member of the union

(Testimony of Carl W. Lundquist.)

was found to be less at the ports where the union did not maintain an office. These men, after shipping began to increase, found it practical to obtain employment in the ports also where the union maintained offices, and consequently made their applications and were assigned from those offices beginning on or about that date.

Q. What were the job opportunities in ports in which the union has branches, with specific reference to Seattle, since [463] this is the only port that is under inquiry here? Will you confine yourself to job opportunities in the Seattle branch?

* * *

Q. (By Mr. Darwin): Was business good or bad? A. No, definitely bad.

Trial Examiner Hunt: We are still talking about why he started out with the June, 1950, date, aren't we?

Mr. Darwin: Yes.

Trial Examiner Hunt: What date was embraced in the last question?

Mr. Darwin: Prior to June 29, 1950.

The Witness: Shipping conditions in Seattle were bad up to that date and for a short period beyond that date.

* * *

Q. (By Mr. Darwin): Now, Mr. Lundquist, from your own experience as an official of the radio unions, and your knowledge of the maritime industry with respect to maritime employees, can you

(Testimony of Carl W. Lundquist.)

give it as your opinion as to whether or not [464] in this industry unionization is highly organized?

* * *

A. Yes, the industry is quite highly organized; not 100 per cent, but I would say 80 to 85 per cent as to the radio operators. [465]

* * *

Q. (By Mr. Darwin): Were there many applicants for inclusion on the assignment list in the Port of Seattle of non-union men prior to June 29, 1950?

* * *

A. No, there were very few.

Q. As far as you know, was there anyone other than Mr. Underwood prior to June 29, 1950, who was a non-union applicant in the Port of Seattle?

A. No, there was no one else.

Q. Now, following his resignation, referring to Mr. Underwood, when does his name next appear on the national assignment lists, and what is his place on that list by way of number? [467]

* * *

A. Mr. Underwood's name did appear on the following assignment list, on the next assignment list dated December 31, 1949. His number at that time was 828. It appeared again on the list of January 7 under the number of 796.

* * *

Q. Now, referring to Union's Exhibit No. 27,

(Testimony of Carl W. Lundquist.)

which you have already identified as a chronology of assignments of radio officers for Alaska Steamship Company vessels from December 1, 1949, to February 24, 1951—and the latter date is just two days before our last hearing—have you indicated on there with respect to Mr. Underwood's number 796 on the list of January 7 whether or not in the regular course, and assuming Underwood had remained a member of the union since January 7, 1950, would there have been—would he have been assigned to any Alaska Steamship Company jobs between that date, namely, January 7, 1950, and November 8, 1950, by the use of the assignment rules then existing and indiscriminately applied to all applicants for jobs? [468]

A. No, that record indicates he would not have been assigned to any of those jobs between those dates.

* * *

Q. (By Mr. Darwin): Now, will you be good enough to take Union's Exhibit No. 27 now in your hand, and explain, first of all, the significance of all entries on there, having the legend, "Reassigned to SS Baranof from standby," beginning with January 6, 1950, for Mr. Allgrunn, and all the way down the line wherever the phrase, "Reassigned" to a certain vessel "from standby"—just what did that mean?

A. That designation, "reassigned to SS Baranof from standby"—the first one, indicates that Mr. Allgrunn had been or was permanently assigned to

(Testimony of Carl W. Lundquist.)

the ship, and he had been on standby for one reason or another, perhaps a vacation trip—I am not saying just exactly why—but it was not a [469] temporary assignment by any means.

Q. All standby references on that list relate to men who were attached to the vessel as permanent job holders on the vessel? A. That is correct.

Q. And in no event would Mr. Underwood have been entitled to assignment to any of those ships, is that right? A. That is correct.

Q. Now, taking up Mr. C. V. Wagoner, will you explain the circumstances under which Mr. Wagoner, the first name on that list, was assigned to the MS Palisana on December 27, 1949?

Mr. Teu: That is on Exhibit 27?

Mr. Darwin: That is right—the first name there on the list.

* * *

A. That entry indicates that there was a radio officer's job open on the Palisana on that date. So the man longest on the unemployed list was given first call. Mr. Wagoner held position number 310 on the list on such date. He had the lowest number on the master list, and therefore was assigned to the job.

Q. Did he also have the lowest number on the beach list for assignment to that job? [470]

A. On the port list, you mean?

Q. Port list? A. Yes.

Q. Now, you recall Mr. Underwood had been on the Palisana just previous to that for two trips?

(Testimony of Carl W. Lundquist.)

A. Yes.

Q. Was that on a relief, or was that on a permanent assignment?

A. Mr. Underwood's previous assignment to that vessel had been a relief assignment.

Q. And that is borne out by Union Exhibit No. 5, which shows that assignment on the assignment slip?

A. Yes, that is right.

Q. Now, taking up the next name, which appears with a star—and I take it that has reference to assignments to vessels other than reassignment from standby—will you explain in each instance whether or not Mr. Underwood could have been assigned to that job by reason of his relative numerical standing on the list as compared with the man who was actually assigned to the job, as shown on Union's Exhibit 27?

A. Taking them—

Q. Right down the line. Take each one and explain the significance.

A. Mr. P. W. Pratt was assigned on February 14 to the [471] *Lucidor* as a temporary assignment.

Mr. Teu: Which item is that you are reading?

The Witness: February 14, 1950, Mr. Pratt was assigned to the *Lucidor* on a temporary basis, as a temporary assignment. His list number at the time he was assigned was 149, and using that as a check point and going back to the list of January 7, he was at that time No. 137.

(Testimony of Carl W. Lundquist.)

Q. To save time as we go along and explain each of these assignments, Mr. Underwood's number was 796 with respect to all men concerning whom you are now testifying—is that right?

A. On the list of January 7, 1950.

Q. That is right. Go ahead.

A. The next assignment is February 23 to Mr. Beall. He was assigned to the Square Sinnet, and his list number on January 7 had been 42 as compared with 796.

Trial Examiner Hunt: Wouldn't Underwood's number have changed from week to week?

The Witness: That is the reason I keyed it to the list of January 7. To answer your question, Underwood's name would have been rising on the list.

Trial Examiner Hunt: Am I to infer that all of the individuals to whom you are now referring and testifying [472] concerning were out of employment in the sense of not using their license from January 7, 1950, to the dates shown opposite their names on this Exhibit 27?

The Witness: You are referring to——

Mr. Darwin: The first date in the column on the list. That is right.

The Witness: Yes.

Q. (By Mr. Darwin): Will you proceed with the next?

A. The next assignment following that was on February 24, Mr. Tutt. He was assigned to the

(Testimony of Carl W. Lundquist.)

Denali, and on January 7 his list number had been 230 as compared to 796.

The next assignment was on March 8. Mr. Buer was assigned to the Coastal Monarch on a temporary basis. His list number on January 7 had been 812, but Underwood had indicated he was not interested in temporary assignments.

Q. In that instance Mr. Underwood would have been entitled to a referral to that job except for a limitation, the limitation imposed by himself?

A. That is correct.

Q. For permanent jobs?

A. Yes. The next assignment following that is March 14; Mr. Trevethan was assigned to the SS Nadina. On January 7 his list number had been 240.

Q. As compared with 796 for Mr. Underwood?

A. As compared with 796. [473]

Q. Go ahead.

A. On March 23 Mr. Beall was assigned to the Square Sinnet. He had been number 42 on January 7.

On April 5, 1950, Mr. Healy was assigned to the Coastal Rambler.

On January 7 his number had been 536 as compared with 796 for Underwood.

On April 8, 1950, Mr. Pratt was assigned to the Lucidor, and his number on January 7 had been 167 as compared with 796 for Mr. Underwood.

On April 21, Mr. Hallett was assigned to the

(Testimony of Carl W. Lundquist.)

Flemish Knot. His list number on January 7 had been 598.

The next assignment is Mr. Deyo. He was assigned to the SS Alaska. It does not say in what category. I did not list his category. That is a passenger ship which had carried and still does carry three operators. I have a notation there, "January 7, 793," which I have lined out. I will have to check it. I don't remember. It is quite a while since I compiled this list, and I don't recall now as to why I lined that number out.

But in any event, No. 793—let's see. Mr. Underwood had been No. 796.

Going on—following that the next assignment—the next two assignments were made at the same time on May 16th. [474]

Mr. Goodrich and Mr. Wickens were assigned as assistant radio officers on the Aleutian, and there appears, respectively, on January 7 numbers 749 and 583 as compared with 796.

On June 28, Mr. Hibbs was assigned to the Victoria.

On January 7 his number had been 324 as contrasted with 796.

Mr. King was assigned on the same date to the Ring Splice. His number had been 347.

On July 12 Mr. Moe was assigned to the Denali on a temporary basis. His number had been No. 732.

On July 15 Mr. Northstrom had been assigned—was assigned to the Coastal Monarch on a temporary

(Testimony of Carl W. Lundquist.)

basis, and there is another instance where Mr. Underwood's number as of January 7 was a smaller number than Mr. Northstrom's but on July 15 that assignment was also a temporary assignment.

Q. You mean a temporary job?

A. A temporary job. It was not a permanent assignment.

The next assignment was on August 3, 1950, of Mr. Ember.

That was also a temporary assignment to Mr. Ember. His list number had been 524.

The assignment following that on August 10, 1950, was to Mr. Carter, assigned to the Joliet Victory in New York, and that ship was not engaged in the Alaska trade. She was engaged overseas, which Mr. Underwood had indicated he [475] did not want.

Incidentally, I might add that the Joliet Victory is not owned by the Alaska Steamship Company. It is operated for the MSTS by Alaska Steamship Company. It is a temporary situation.

Then the next assignment was on August 29, 1950. Mr. Wentworth was assigned to the Bedford Victory at Baltimore. The situation there is parallel to that on the Joliet Victory. It was a ship operated by—for the MSTS in the overseas trade by the Alaska Steamship Company.

That covers—you requested what date?

Q. Through November 8th.

A. On September 10 Mr. Newbill was assigned to the SS Denali from the bottom of the list. In

(Testimony of Carl W. Lundquist.)

other words, there were no men ahead of him available who wanted that ship. Mr. Underwood at that time was in Alaska employed in a cannery. Incidentally, I think I might clarify matters by stating all these assignments with the exception of those otherwise noted were made at Seattle. I noted one at New York and one at Baltimore, I believe.

On September 11, Mr. Noah was assigned to the Ring Splice, also from the bottom of the list. Again, at that time Mr. Underwood was employed in a cannery in Alaska.

On September 12 Mr. Moe was assigned to the Victoria, and his list number on January 7 had been No. 732. [476]

The next assignment was on October 14. Mr. Newbill was assigned to the Victoria, and that is indicated as a pierhead jump. That is the time—that is a term we use when a job must be filled at the very last moment. The previous operator had missed the ship, and Mr. Newbill went down there on a rush and just got aboard in time to prevent the ship's being delayed.

Q. In connection with pierhead jumps, that occurs infrequently and where an emergency arises, where you pick up the first man whom you can get, so that the vessel is not prevented from sailing?

* * *

A. That is right.

* * *

(Testimony of Carl W. Lundquist.)

Q. Go ahead. [477]

* * *

A. And following that on October 18 Mr. Zink was assigned to the Ring Splice. The Ring Splice was going on charter to Grace Line, and was going to operate to South America on a voyage of between two and three months, which Underwood had indicated he was not interested in.

The next was on November 8th. Mr. Capp was assigned to the Denali, and his list number on January 7 had been 340, as compared with 796.

Q. Now, Mr. Lundquist, why did you stop in that review, in your review of this list, at the date of November 8, 1950?

A. The reason I stopped there was that the assignment of Mr. Capp to the Denali was the assignment of the last man on the assignment list of January 7, ahead of Mr. Underwood. [478]

* * *

Q. (By Mr. Darwin): All right. Now, on October 13, 1950, you sent Mr. Underwood a wire which has already been read into the record offering him a job on an MSTs vessel? A. Yes. [481]

* * *

Q. Did Underwood telephone you in response to that telegram? A. Yes, he did.

Q. What did he say?

A. He advised me—he asked me for such information as I could give him about the jobs, what they were, how long they were going to last, and so

(Testimony of Carl W. Lundquist.)

forth, and he concluded by saying he would rather wait for an Alaska Steamship Company vessel.

Q. On December 19 you sent him a telegram with a job offer, did you not? A. Yes, I did.

Q. Looking at that with the notes you have made, will you tell us, after refreshing your recollection from that as to what transpired between you and Mr. Underwood?

A. Yes, that telegram was sent at 1600 o'clock. That would be four o'clock in the afternoon, on December 19, as soon as I had the information the job was open. At ten o'clock in the morning of the 20th Mr. Underwood called me at the office and said he had received my wire, and asked me if it was a job with the MSTs, and I told him it was not; I told [482] him it was with another government agency, the Fish and Wildlife Service, and I told him that was all that I knew about the job, and suggested he call a Mr. Bright, who was the person who had called me in turn, asking me to supply a radio officer.

I gave him Mr. Bright's telephone number, but I do not know whether or not Underwood contacted Mr. Bright or not.

Q. You wired him on February 19, 1951, and at that time did he give you any response?

A. Yes.

Q. That wire was with respect to a job offer?

A. That was with regard to a job with a ship under contract with ARA, and he phoned—I did not make any note as to when he phoned—but he said

(Testimony of Carl W. Lundquist.)

he would not be able—he did not say at first he would not be able; he said he would have to check with Mr. Teu to see whether he would be permitted to make the trip. And he called back again and said he would not be able to.

Q. Did he tell you why?

A. He said he had been subpoenaed to appear before the hearing.

Q. This hearing? A. This hearing.

Q. Was Mr. Underwood assigned a job on February 27, 1951? [483]

A. I believe the assignment slip was made out on the 27th, yes.

Q. Now, to what vessel? A. The *Pacificus*.

Q. Had Mr. Underwood indicated to you previously to such assignment that he was now available for a job other than a permanent job with the Alaska Steamship Company?

A. He had indicated that he was. Prior to that he had indicated he was interested in a permanent or temporary job with the Alaska Steamship Company.

Q. Now——

Trial Examiner Hunt: Who owned the *Pacificus*?

The Witness: The Coastwise Line. [484]

* * *

Q. (By Mr. Darwin): Mr. Lundquist, on the day of the previous hearing, February 27, to be exact, did you and Underwood have a conversation with respect to his preference for the kind of work that he wanted?

(Testimony of Carl W. Lundquist.)

A. I had a conversation with Underwood. I don't know whether he expressed a preference.

Q. What did he say?

A. The occasion arose when the job on the Pacificus opened up. I pointed out that the Pacificus was not an Alaska Steamship Company vessel, and that he had not previously indicated he wanted anything else; but asked him, nevertheless, whether he wanted that assignment; and he agreed he would take it. [485]

Q. And was that a change on his part from his preference for a permanent or temporary job on the Alaska Steamship Company to any job with any other company?

A. That was the first time he had indicated that he would accept any assignment other than to the Alaska Steamship Company.

Q. And in the regular course of his position on the list, was he entitled to that assignment?

A. He was.

Q. And he has been working on that since?

A. He has. [486]

* * *

Q. Now, Mr. Underwood also in his testimony said that you had told him about an extra list.

Is there any such list? A. No.

Mr. Teu: Just a minute. I don't think there is any testimony in the record about Mr. Underwood having advised—about Mr. Lundquist having ad-

(Testimony of Carl W. Lundquist.)

vised Mr. Underwood that there was an extra list.

If you are going to quote the testimony—

Mr. Darwin: All right. I will read it. I was trying to shorten it. (Reading):

“Question (By Mr. Teu): Did he say anything further about the regular assignment list?”

And Mr. Underwood answered: “Yes, he said, ‘We have the active, the inactive, and the employed and the deferred, the permit card, and this extra list.’ ”

And then you asked him, “Question: What is the extra list?”

And he said, “I suppose applicants like myself.” I asked that the answer be stricken.

Trial Examiner Hunt: You may answer.

A. No, I made no such reference to the extra list.

Q. Is there in fact an extra list?

A. There is not. [489]

* * *

Trial Examiner Hunt: That is not what I meant, I am sorry, Mr. Darwin. I understood from the testimony of the witness a possible inference that at one time everyone on the national assignment list was a member of the union, that it was the practice to have only members of the union listed on that list.

Now, he testified that as of today and for some time in the past that the list—the national list—is not exclusively composed of members of the union. [497]

(Testimony of Carl W. Lundquist.)

Is that correct so far?

The Witness: That is correct.

Trial Examiner Hunt: What is the date or approximate date when the practice was changed?

The Witness: As to the National list I would say June 15, 1950.

Q. (By Mr. Darwin): Now, Mr. Dallas Hughes, when he was here testifying and you were here to hear him, admitted that he had had other assignments from the union although he was a non-union member, but he claims he had no place on the assignment list.

Is that a fact?

Trial Examiner Hunt: The national list?

Mr. Darwin: The national list.

A. Is it a fact that he had no place?

Q. That is right. A. That is true.

Q. Now, give us the reasons for that.

A. The reason for that is that he did not come in and register for employment.

Q. You mean he has not physically wanted to sign an application blank, is that correct?

A. Yes.

Q. The means by which any man, union or non-union, is accorded a place on the national list, as to procedure? [498]

A. The procedure is that a radio officer qualified with all the necessary license papers comes in and indicates he wants to obtain employment through the facilities maintained by the ARA and indicates from what port he wants to ship. Then he fills out

(Testimony of Carl W. Lundquist.)

that form which has already been referred to, and signs it, to indicate that is his status, and the proper duplicate or triplicate, whichever it is, of that form is transmitted to the secretary-treasurer's office along with all other registrations, whether they be union or non-union men.

Q. And the form you refer to is our Union Exhibit 5?

A. Yes. And then when the following week's assignment list is made up, those names will appear in the order of the dates of application.

Q. And would it then follow that if a man does not sign those, he cannot thereafter physically appear on the assignment list?

* * *

A. A person's name could not appear unless he had filled out such a form. [499]

* * *

Q. (By Mr. Darwin): Mr. Hughes said at page 72 that he had registered with you for employment. Did he ever physically sign any paper for such registration?

A. When you say "ever" you are referring to how far back?

Q. From the time you have been here.

A. No.

Q. He said that you did make assignments of non-union men despite the fact that they did not sign application blanks—

A. Because of the fact that shipping was such that we had to go wherever we could to get them in.

(Testimony of Carl W. Lundquist.)

If we didn't have men available on our own port assignment list, then we would have to go scouting around elsewhere to other unions, or to whatever source there might be a free lance or wherever I might hear of a man available for an operator's job.

I would get in touch with him and ask him if he wanted [500] the job. [501]

* * *

Cross-Examination

By Mr. Hull: [502]

* * *

Q. On what occasions does the Alaska Steamship Company call the employment office of ARA to secure personnel for its vessels?

A. When a ship re-enters service from lay-up service, or when they have purchased a new ship, or when the previously assigned radio officer has indicated he is resigning from service, and in cases where the operator does not show up and misses the ship. [503]

* * *

Cross-Examination

By Mr. Teu:

Q. Mr. Lundquist, certainly to me the record is not clear with respect to registration of members of ARA as well as registration of non-members at the time such registrations were accepted. For how long—for what period of time is a registration good once you register with the union?

(Testimony of Carl W. Lundquist.)

A. Registration for employment?

Q. Right.

A. Until such time as that person obtains a job, either through the facilities of the union or otherwise. And that job may be on a ship or it may be in a cannery or in a coast station, any job at all which involves and requires the use of that person's radio operator's license. [505]

Q. At the end of such time is it a requirement of the union that he must personally appear at one of the port agencies of the union and re-register?

A. If he wishes to be available for employment, yes. [506]

* * *

Q. (By Mr. Teu): Mr. Lundquist, is there anything in the records of the Seattle port office which show what action was taken upon Mr. Underwood's resignation as is manifested by Union Exhibit No.—I don't know what the number is.

Trial Examiner Hunt: Just a minute. It is No. 6.

A. That would be indicated in the minutes of the port branch membership meeting.

Q. I say is there anything there to indicate that they did act on his resignation? A. Yes.

Q. What is the nature of that particular evidence in the files of the port—

A. In the files of a membership meeting it is recorded that the port agent brought this matter, this letter, to the attention of the meeting, and the meeting voted to accept it.

(Testimony of Carl W. Lundquist.)

Q. And his resignation was accepted as of that date, the date of the meeting? A. Yes.

Q. Do you recall the date of the meeting?

A. No, I do not.

Q. Can you give an approximate date?

A. It would be quite early in January. It would have been, [512] I am quite sure, before the 10th of January.

Q. Of 1950? A. 1950. [513]

* * *

Q. That is also true with the entry of 3/28/50 on Union Exhibit 28? A. Yes.

Q. You testified that Underwood's position, I believe, on December 1, or whenever this list was made up, was 828 on the national list?

A. No, on the list of January 7, his number of—his number was 796. The number 828 was on the list of December 31, at which time he sent in the resignation.

Q. Now, that is on the national list? [519]

A. That is correct.

Q. What was his position on the Seattle list, or number on the Seattle list?

A. On January 7 he was 21 on that list at that time, but he was not available for assignment. So the man next in order after him was given 21.

Q. He was actually moved up as it were during all this period on the national list as well as on the Seattle port list?

A. He had been moving up since [520] December 1.

(Testimony of Carl W. Lundquist.)

* * *

Redirect Examination

By Mr. Darwin: [527]

* * *

Q. Mr. Lundquist, I was very much surprised at your statement that if a man is employed long enough he drops off the list completely.

Will you briefly and quickly explain just how that occurs?

A. Yes; a man first of all of course is on the active list, somewhere on that list in accordance with how long he has been unemployed, until such time as he gets an assignment.

At the end of the week, when he gets an assignment, when the next list is compiled, his name is moved over from the active column to the employed column, and down thirty [528] numbers. For instance, he may have been number one active. If he is given an assignment the following week he appears as number 31 in the employed column. Or he may have been 450 in the active column. When he accepts employment or assignment, the next week his number is 480 on the employed column. He continues going down the list at that rate, 30 numbers every week, and if he remains employed long enough so that his name reaches a number equal to the number held by the last man on the active assignment list, and if he remains employed, then his name no longer appears in the employed column. The em-

(Testimony of Carl W. Lundquist.)

employed column is limited to the foot of the active list.

Trial Examiner Hunt: For the purpose of clarity, let me ask this: There isn't a separate list of members for the active, inactive or unemployed columns? We have only one series of numbers. The names set forth opposite the numbers are set forth in one of three columns. An individual, as on Union Exhibit 28, named White, has the number 70. He is in the employed column and the first individual in that column. Now, you can continue on looking in the employed column for the names of individuals working with numbers assigned in the way the witness related to you until you get to the bottom of the list. The bottom of list must, as I understand the testimony of the witness, contain the name of an active or inactive radio operator, and there is no purpose [529] in further lengthening the list by setting forth other individuals who might be employed with a number lower than that of the active or inactive man at the bottom of the list. Is that what you are saying?

The Witness: That describes it specifically.

Mr. Darwin: That is all.

Trial Examiner Hunt: The purpose of this list is not so much to maintain records of individuals who are employed, but those who are unemployed?

The Witness: That is right.

(Testimony of Carl W. Lundquist.)

Recross-Examination

By Mr. Teu:

* * *

Q. Now, when did you remove, if you did remove, Underwood's name from the national list?

A. I didn't remove his name.

Q. Was his name removed? A. Pardon?

Q. Was his name removed? [530]

A. His name was removed from the list, I believe, in the week following January 7.

Q. As action at that time by the union on his resignation?

A. That would be the following list, yes.

Mr. Teu: That is all.

Redirect Examination

By Mr. Darwin:

Q. If Underwood had come in and signed a registration slip like the one in Union's Exhibit 5, following his removal from the list, would he then have gone on again?

A. If he had re-registered, yes.

Q. If he had re-registered? A. Yes.

Mr. Darwin: That is all.

Recross-Examination

By Mr. Teu:

Q. Are there any shipping rules under which you operate now other than contained in, I believe, your Exhibit 1?

(Testimony of Carl W. Lundquist.)

A. No, those are the only shipping rules.

Q. The only shipping rules?

A. And they determine the operation of the ports.

Mr. Teu: That is all.

Trial Examiner Hunt: I am under the impression that the last answer of the witness in response to a question by Mr. Darwin is inconsistent with his other testimony. [531]

Mr. Lundquist—the witness is nodding; apparently he see what I have in mind. Do you want to go ahead and give your answer in addition to any statements you made previously?

The Witness: I see what you are driving at. My statement should have been qualified to state that subsequent to June 15, when the new shipping rules went into effect, the national list included both members and non-members, and his name would have appeared on the national list had he registered.

Trial Examiner Hunt: That was my point. I think a reasonable interpretation and perhaps the only reasonable interpretation of the witness' testimony is that following action by the union upon Underwood's letter of resignation Underwood's name was stricken from the national list.

It was stricken from that list because he had resigned from the union, and that if at any time after the promulgation of the new rules, that is, shipping rules, if Underwood had executed a form like that which appears at the bottom of Union's Exhibit 5 showing that he wanted to be on the active list in

(Testimony of Carl W. Lundquist.)

Seattle, he would have been given a place on the national list. Is that a reasonable interpretation?

Mr. Darwin: That is correct. [532]

* * *

Trial Examiner Hunt: Was it Underwood's testimony that he wanted a job in that run with any company other than the respondent company?

Mr. Teu: He wanted an Alaska Steamship Company ship.

Trial Examiner Hunt: Is that your recollection of his testimony, Mr. Teu?

Mr. Teu: I don't think there is any testimony to the effect that he would have taken an assignment on any other lines shipping in the Alaska trade. I don't recall any to that effect. [537]

* * *

Trial Examiner Hunt: I am sorry. I may not have made myself clear. I don't recall any testimony by this witness that Miller told the witness that there had been such a conversation with Underwood. I am afraid an inference has been drawn by the union from Underwood's resignation.

I understood the witness to testify that Miller told him that after the resignation Underwood had not been called for some time, but the witness also testified that Miller told him that during the summer of 1950 Miller had tried to reach Underwood, and had learned that Underwood was in Alaska.

My question was, did Miller state why he had tried to reach Underwood, despite the fact that

(Testimony of Carl W. Lundquist.)

Underwood had not physically come in to register on an assignment registration slip of the type in Union Exhibit 5. [545]

Do you know the circumstances that caused Miller to seek out Underwood?

The Witness: I think I do, yes. Miller, as I believe I previously indicated, when I received the charge, acquainted me with as much of the Underwood matter as he could; and he said first of all—he related that prior to the resignation he understood, and in fact that it was his understanding from that resignation, that Underwood preferred to ship elsewhere.

Then he said also there had been some correspondence between Alaska Steamship Company and himself, and he had stated his position, that the union was not going to discriminate against Underwood because of non-membership; and subsequent to that he had called Underwood on at least one occasion during the summer——

Trial Examiner Hunt: Tried to call him?

The Witness: Or had placed a call to him, and had been advised by Underwood's daughter that Underwood had accepted employment in Alaska, and I also understood from Mr. Underwood's own testimony here that Miller actually did contact him in person with regard to the relief assignment on the Baranof. [546]

* * *

(Testimony of Carl W. Lundquist.)

Redirect Examination

By Mr. Darwin:

* * *

Q. Between December 1, 1949, and June 1, the date last mentioned by Mr. Teu, June 1, 1950, were radio operators, union and non-union, dispatched indiscriminately?

A. Between December, 1949, and June 1, 1950?

Q. And June 1, 1950. If they filed applications?

A. If they filed applications, yes. [555]

* * *

Q. (By Mr. Darwin): Were the employment opportunities made equally available to union and non-union members between about December 1, 1949, and July 1, 1950?

A. Yes, they were. [559]

* * *

J. F. ZUMDIECK

called as a witness by and on behalf of Respondent Alaska Steamship Company, having been first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Hull:

Q. By whom employed?

A. Alaska Steamship Company.

Q. In what capacity?

A. Operating manager.

Q. How long have you been employed in that capacity?

A. Approximately 5 years. [560]

(Testimony of J. F. Zumdieck.)

Q. And how long have you been employed by the company? A. About 14 years.

Q. Prior to your duties as operating manager, in what capacity did you serve? A. Pardon?

Q. Prior to taking over your duties as operating manager, what capacity did you have with the company?

A. Oh, various duties. Dealing with our labor relations and stevedoring and clerical work in the Operating Department.

Q. What are your duties as operating manager of the company?

A. General supervision of the operation and maintenance of the company's vessels.

Q. In connection with your duties, are you familiar with the manner in which the Alaska Steamship Company obtains radio operators on its vessels? A. Yes, I am.

Q. Now, how does the Alaska Steamship Company obtain its radio operators on its vessels?

A. Through the office—I have got to be careful here, now (laughing). Through the ARA, I believe.

Trial Examiner Hunt: That is the right designation presently, ARA.

Q. (By Mr. Hull): And when the company calls for a radio officer for one of its vessels, how does it go about it? [561]

That is, what kind of a request does it make?

A. Well, our port engineer telephones the union hiring hall for a radio officer for a specific vessel.

(Testimony of J. F. Zumdieck.)

Q. How long has that practice been in effect, Mr. Zumdieck, to your knowledge?

A. I would say since 1935 that I am aware of.

Q. Are there other categories of employees employed by Alaska Steamship Company on its vessels?

A. There are.

Q. What are they? Can you name them?

A. Deck officers, engine officers, unlicensed deck personnel, unlicensed personnel, and unlicensed steward's department.

Q. Will you state whether or not it has been the practice of the Alaska Steamship Company to employ those other categories of seagoing employees through the employment office of the collective bargaining agent for the particular classification of employees involved?

A. Yes, it has been.

Q. And how long has that practice been in effect?

A. I would say since—I would like to make a correction there. There is a variance in our deck officers and our licensed engine personnel. With the exception of those two groups and our staff officers, it has been our practice to call the union hiring hall to secure the rating requested. [562]

Q. Now, does the company itself maintain any offices or facilities for employing radio operators on its vessels itself?

A. No.

Q. And it does not maintain any facilities for employing any other categories of the employees you mentioned?

A. No.

Q. And that has been the practice of the company for some time past, hasn't it?

A. Yes.

(Testimony of J. F. Zumdieck.)

Q. Now, Mr. Zumdieck, on or shortly after May 4, 1950, I want you to state whether or not the Alaska Steamship Company received a circular from the Pacific Maritime Association which in effect directed Alaska Steamship Company to cease giving effect to the hiring provisions of the then existing collective bargaining agreement between Pacific Maritime Association and the American Radio Association? A. We did.

Q. And were the instructions in that circular put into effect? A. No, they were not.

Q. I will ask you, Mr. Zumdieck, did the Alaska Steamship Company take any steps to put those instructions into effect?

A. They did not. [563]

* * *

Q. And was it because of the instructions contained in Company's Exhibit 1 that Alaska Steamship Company did not put into effect the instructions contained in the prior circular that you received from the Pacific Maritime Association?

A. That is right.

Q. And you abided by the instructions contained in Company's Exhibit 1 up until the time the new agreement was executed between PMA and the ARA, is that correct? A. That is right. [564]

* * *

(Testimony of J. F. Zumdieck.)

Cross-Examination

By Mr. Teu:

* * *

Q. All right. How long did the Alaska Steamship Company operate under the old contract of 1948?

A. Up until the time it was amended by agreement, I believe, in August.

Mr. Hull: July 14th.

Q. You operated under the old contract until that date? A. That is right. [566]

* * *

Trial Examiner Hunt: Company's Exhibit 1, which I [571] received in evidence, is on the letterhead of the PMA, at its office in San Francisco. It is dated May 11, 1950, addressed to members:

"Re: Posting Notices in ARA Case No. 20-CA-166, NLRB. Further to our circular to members of May 4, 1950.

"It has been determined that compliance with NLRB order of April 28, 1950, may be deferred, for a reasonable time, without risk of penalty, awaiting the outcome of present negotiations with the ARA on contract clauses replacing those found objectionable under such order.

"Accordingly, please disregard the instructions contained in our circular of May 4th and any orders posted according to those instructions should be removed and contractual relations, including hiring

practices with the ARA, should continue to be recognized as in the past.

“We will keep you fully informed as to developments in this matter.

“PACIFIC MARITIME
ASSOCIATION,

“J. B. BRYAN,
“Vice President.”

(Document heretofore identified as Company's Exhibit No. 1, received in [572] evidence.)

* * *

(Documents referred to, previously marked for identification, Union's Exhibits Nos. 7 to 29, inclusive, received in evidence.) [573]

* * *

In the United States Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

ALASKA STEAMSHIP COMPANY,

and

AMERICAN RADIO ASSOCIATION, CIO,
Respondents.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.87, Rules and Regulations of the National Labor Relations Board—Series 6, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a consolidated proceeding had before said Board, entitled, “In the Matter of Alaska Steamship Company, Employer and Horace W. Underwood (an individual), Cases Nos. 19-CA-277 and 19-CA-358” and “In the Matter of American Radio Association, CIO, and Horace W. Underwood (an individual), Cases Nos. 19-CB-90 and 19-CB-135,” such transcript includes the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and includes also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Order designating A. Bruce Hunt, Trial Examiner for the National Labor Relations Board, dated February 26, 1951.

(2) Stenographic transcript of testimony taken before Trial Examiner Hunt on February 26 and 27 and March 26 to 28, 1951, together with all exhibits introduced in evidence, also rejected exhibits.

(3) Respondent Company's letter, dated April 7, 1951, requesting extension of time to file brief.

(4) Respondent Union's letter, dated April 7, 1951, requesting extension of time to file brief.

(5) Respondent Union's letter, dated April 25, 1951, requesting extension of time to file brief.

(6) Copies of Associate Chief Trial Examiner's telegrams, dated April 30, 1951, granting all parties extension of time to file briefs.

(7) Copy of Trial Examiner Hunt's Intermediate Report, dated July 3, 1951, (annexed to item (19) hereof); order transferring case to the Board, dated July 3, 1951, together with affidavit of service and United States Post Office return receipts thereof.

(8) Respondent Company's telegram, dated July 18, 1951, requesting extension of time to file exceptions and brief.

(9) Respondent Union's telegram, dated July 19, 1951, requesting extension of time to file exceptions and briefs.

(10) Copy of Board's telegram, dated July 20,

1951, granting all parties extension of time to file exceptions and briefs.

(11) Statement of exceptions received from Charging Party, Horace W. Underwood, on July 30, 1951.

(12) Respondent Company's exceptions to the Intermediate Report, received August 9, 1951.

(13) Respondent Union's telegram, dated August 10, 1951, requesting further extension of time to file exceptions and briefs.

(14) Copy of Board's telegram, dated August 10, 1951, granting all parties further extension of time to file exceptions and briefs.

(15) Respondent Union's telegram, dated August 17, 1951, requesting still further extension of time to file exceptions and briefs.

(16) Copy of Board's telegram, dated August 17, 1951, denying Respondent Union's request for still further extension of time to file exceptions and briefs.

(17) Respondent Union's letter, dated August 18, 1951, joining in the brief filed by Respondent Company with the exception of point 4 (pages 6 and 7).

(18) Respondent Union's exceptions to the Intermediate Report, received August 20, 1951.

(19) Copy of Decision and Order issued by the National Labor Relations Board on February 11, 1952, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 24th day of September, 1952.

/s/ LOUIS R. BECKER,
Executive Secretary.

[Seal] NATIONAL LABOR
RELATIONS BOARD.

[Endorsed]: No. 13559. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Alaska Steamship Company and American Radio Association, C.I.O., Appellee. Transcript of Record. Petition for Enforcement of an Order of the National Labor Relations Board.

Filed September 30, 1952.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

[Title of Court of Appeals and Cause.]

PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR
RELATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. V, Secs. 141, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its Order against Respondent, Alaska Steamship Company, (hereinafter called Respondent Company) its officers, agents, successors and assigns and American Radio Association, CIO (hereinafter called Respondent Union) its officers, representatives, agents, successors and assigns. The consolidated proceeding resulting in said Order is known upon the records of the Board as "In the Matter of Alaska Steamship Company, Employer, and Horace W. Underwood (an individual) Cases Nos. 19-CA-277 and 19-CA-358" and "In the Matter of American Radio Association, CIO, and Horace W. Underwood, (an individual) Cases Nos. 19-CB-90 and 19-CB-135."

In support of this petition the Board respectfully shows:

(1) Respondent Company is a Washington corporation engaged in business in the State of Washington and Respondent Union is a labor organiza-

tion engaged in promoting and protecting the interests of its members in the State of Washington, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on February 11, 1952, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent Company, its officers, agents, successors, and assigns and Respondent Union, its officers, representatives, agents, successors and assigns. On the same date, the Board's Decision and Order was served upon Respondents by sending copies thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the consolidated proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondents and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and

enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing those sections of the Board's said Order which relate specifically to the Respondents herein, and requiring Respondent Company, its officers, agents, successors and assigns and Respondent Union, its officers, representatives, agents, successors, and assigns to comply therewith.

NATIONAL LABOR
RELATIONS BOARD.

By /s/ A. NORMAN SOMERS,
Assistant General Counsel.

Dated at Washington, D. C., this 24th day of
September, 1952.

[Endorsed]: Filed September 30, 1952.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH
PETITIONER INTENDS TO RELY

In this proceeding, petitioner, National Labor Relations Board, will urge and rely upon the following points:

1. The Board properly found that the Company violated Section 8 (a) (1) and (3) of the Act, as amended, by discriminating against Horace W. Underwood, and that the Union violated Section 8

(b) (2) and (1) (A) by causing the Company to do so.

2. The Board's order is in all respects valid and proper.

/s/ A. NORMAN SOMERS,
Assistant General Counsel, National Labor Relations
Board.

Dated at Washington, D. C., this 24th day of
September, 1952.

[Endorsed]: Filed September 30, 1952.

CA No. 13559

United States of America—ss.

The President of the United States of America

To: Alaska Steamship Company, Pier 42, Seattle,
Wash., and American Radio Association, CIO,
3138 Arcade Bldg., Seattle, Wash.,

Greeting:

Pursuant to the provisions of Subdivision (e) of
Section 160, U.S.C.A. Title 29 (National Labor Re-
lations Board Act, Section 10 (e)), you and each
of you are hereby notified that on the 30th day of
September, 1952, a petition of the National Labor
Relations Board for enforcement of its order entered
on February 11, 1952, in a proceeding known upon
the records of the said Board as "In the Matter of
Alaska Steamship Company, employer, and Horace
W. Underwood (an individual) Cases Nos. 19-CA-

277 and 19-CA-358, and In the Matter of American Radio Association, CIO, and Horace W. Underwood (an individual), Cases Nos. 19-CB-90 and 19-CB-135," and for entry of a decree by the United States Court of Appeals for the Ninth Circuit, was filed in the said United States Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 30th day of September, in the year of our Lord one thousand, nine hundred and fifty-two.

[Seal] /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

Received October 2, 1952.

Returned on Service of Writ attached.

[Endorsed]: Filed October 9, 1952.

[Title of Court of Appeals and Cause.]

ANSWER OF RESPONDENT ALASKA
STEAMSHIP COMPANY TO THE PETI-
TION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR RE-
LATIONS BOARD

Comes now the Respondent Alaska Steamship Company (hereinafter called "Respondent Company") and for Answer to the petition for enforcement herein admits, denies and alleges as follows:

I.

Answering paragraph numbered (1) of the petition, admits that Respondent Company is a Washington corporation engaged in business in the State of Washington and within this judicial circuit; that American Radio Association, CIO (hereinafter called "Respondent Union") is a labor organization engaged in promoting and protecting the interests of its members in the State of Washington, and within this judicial circuit; that this Court has jurisdiction of the petition for enforcement herein by virtue of Section 10(e) of the National Labor Relations Act, as amended (hereinafter called the "Act"); and denies each and every other allegation contained in said paragraph numbered (1), and particularly denies that unfair labor practices occurred as alleged.

II.

Answering paragraph numbered (2) of the petition, admits that proceedings were had before the

Petitioner (hereinafter called the "Board") in the matter referred to in the petition, that on February 11, 1952, the Board stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent Company, its officers, agents, successors and assigns, and to Respondent Union, its officers, representatives, agents, successors, and assigns, and that the Board's Order was served upon respondents as alleged; and denies that due proceedings were had, that the Board duly stated the findings of fact and conclusions of law, or any of them, that the Board duly issued the Order, that the findings of fact and conclusions of law, or any of them, or the issuance of the Order were upon due proceedings had as alleged in said paragraph numbered (2).

III.

Answering paragraph numbered (3) of the petition, denies that it has knowledge or information sufficient to form a belief as to the truth of the allegations therein contained and therefore denies the same.

IV.

Further Answering said petition, the Respondent Company alleges:

(1) As used hereinafter in this Answer the word "find" means find and conclude, the word "found" means found and concluded, the word "finding" means finding and conclusion, the word "Examiner" means the Trial Examiner, the words "related findings" mean subsidiary and related findings of the

Examiner or the Board upon which in whole or in part the findings referred to are based, and the word "complainant" means the person in whose favor the Board entered a back pay order; where it is alleged in this Answer that a finding or findings are not supported by the evidence is meant in addition that the same are not supported by substantial evidence on the record considered as a whole and also that a contrary finding or findings would be supported by substantial evidence on the record considered as a whole and the preponderance of the evidence; where references are made to section numbers the same refer to sections of the Act.

(2) The Board in its Decision found that the act of removing complainant's name from the national assignment list of the Respondent Union constituted discrimination in violation of Sections 8(a)(1) and (3) by the Respondent Company and Sections 8(b)(1)(A) and (2) by the Respondent Union. Said findings, including related findings, are not supported by the evidence and are contrary to law.

(3) The Board in its Decision adopted the findings of the Examiner, to wit, that the Respondent Company discriminated against complainant on May 5, 1950, in violation of Sections 8(a)(3) and (1), and that, by causing the Respondent Company to do so, the Respondent Union violated Sections 8(b)(2) and (1)(A). Said findings, including related findings, are not supported by the evidence and are contrary to law.

(4) The Board in its Decision adopted the findings of the Examiner, to wit, that the failure to offer complainant the assignment as Second Radio Officer on the SS Alaska on May 5, 1950, filled by Lewis A. Deyo, was discriminatory within the meaning of the Act. Said findings, and related findings, are not supported by the evidence and are contrary to law.

(5) The Board, in its Decision adopted the findings of the Examiner, to wit, that on May 5, 1950, complainant was unlawfully denied employment. Said findings, and related findings, are not supported by the evidence and are contrary to law.

(6) The Board in its Decision adopted the findings of the Examiner, to wit, that the Respondent Union did not restore complainant's name to the national assignment lists of Respondent Union following March 29, 1949. Said findings, and related findings, are not supported by the evidence and are contrary to law.

(7) The Board in its Decision adopted the findings of the Examiner, to wit, that complainant was or would have been entitled to referral by Respondent Union to the SS Alaska ahead of Lewis A. Deyo on May 5, 1950, under the principles of rotary hiring. Said findings, and related findings, are not supported by the evidence and are contrary to law.

(8) The Board in its Decision adopted the findings of the Examiner, to wit, that Lewis A. Deyo's number on the Respondent Union's national assign-

ment list of January 7, 1950, was #815, rather than #793. Said findings, and related findings, are not supported by the evidence and are contrary to law.

(9) The Board in its Decision adopted the findings of the Examiner, to wit, that preference in employment was accorded to members of Respondent Union and resulted in an unlawful denial of employment to complainant on May 5, 1950. Said findings, and related findings, are not supported by the evidence and are contrary to law.

(10) The Board in its Decision adopted the findings of the Examiner, to wit, that the Respondent Company had knowledge of complainant's union or non-union affiliation at times material to this case. Said findings, and related findings, are not supported by the evidence and are contrary to law.

(11) The Board in its Decision adopted the findings of the Examiner, to wit, that complainant would have chosen to stand by the SS Alaska following October 14, 1950. Said findings, and related findings, are not supported by the evidence and are contrary to law.

V.

Further Answering said petition, the Respondent Company alleges that the remedy ordered by the Board, and each portion thereof, is not supported by findings supported by the evidence, is not supported by the findings, will not effectuate the purposes of the Act, is in excess of the powers conferred upon the Board, and is not sustainable in

law; and in the following particulars, among others, the remedy ordered by the Board is not sustainable for one or more of the reasons stated above:

(1) In ordering that the Respondent Company offer any employment whatsoever to complainant as provided.

(2) In ordering that the Respondent Company and the Respondent Union jointly and severally, or in any manner, make whole in any manner the complainant for any alleged loss of pay whatsoever as provided.

(3) In ordering that the officers, agents, successors, and assigns of the Respondent Company, or any of them shall make whole in any manner the complainant for any alleged loss of pay whatsoever.

(4) In ordering that the Respondent Company and the Respondent Union cease and desist from engaging in certain acts or alleged unlawful labor practices, as provided, or from interfering with, restraining or coercing employees in the exercise of rights guaranteed by Section 7, as provided.

VI.

Further Answering said petition, the Respondent Company alleges that the Order of the Board, and each portion thereof except that portion whereby certain allegations of the complaint are dismissed, is not supported by findings supported by the evidence, is not supported by the findings, will not effectuate the purposes of the Act, is in excess of

the powers conferred upon the Board, and is not sustainable in law.

VII.

Further Answering said petition, the Respondent Company alleges:

(1) The Board erred in failing and refusing to order the complaint dismissed in its entirety.

(2) The Board erred in failing and refusing to sustain each and all of the exceptions filed by Respondent Company to the Intermediate Report and Recommended Order of the Examiner.

(3) Without prejudice to its position heretofore or hereinafter asserted herein, the Respondent Company alleges that the Board erred in failing and refusing to find and affirmatively order that complainant should not be offered employment or awarded back pay because his unwillingness to accept employment opportunities amounted to a wilful incurrence of wage losses.

(4) Without prejudice to its position heretofore or hereafter asserted herein, the Respondent Company alleges that the Board erred in failing and refusing to find and affirmatively order that any award of back pay in favor of complainant should terminate not later than October 14, 1950.

(5) Without prejudice to its position heretofore or hereinafter asserted herein, the Respondent Company alleges that the Board erred in failing to find that the Respondent Union was responsible for the

discrimination, if any, suffered by complainant, and that the Board erred in failing to order that the Respondent Union only should be required to make whole the complainant for loss of pay, if any, sustained by the complainant as a result of such discrimination, if any.

(6) Without prejudice to its position heretofore or hereinafter asserted herein, the Respondent Company alleges that the Board erred in ordering that loss of wages, if any, suffered by complainant be computed on a quarterly basis.

Wherefore, having fully answered, the Respondent Company prays that this Honorable Court enter a degree denying the petition and refusing to enforce the Order of the Board, and that the Order be set aside in its entirety, or alternatively, that the Order be modified in the respects the same may be found to be improper, and that the Respondent Company receive such other and further relief as to this Honorable Court may seem just.

BOGLE, BOGLE & GATES,

/s/ EDWARD G. DOBRIN,

/s/ J. TYLER HULL,

Attorneys for Respondent, Alaska Steamship Company.

Duly verified.

Certificate of Mailing attached.

[Endorsed]: Filed October 15, 1952.

[Title of Court of Appeals and Cause.]

ANSWER OF RESPONDENT AMERICAN
RADIO ASSOCIATION, CIO, TO THE
PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR
RELATIONS BOARD

Come now the Respondent American Radio Association, CIO, (hereinafter called "Respondent Union") and for Answer to the petition for enforcement herein admits, denies and alleges as follows:

I.

Answering paragraph numbered (1) of the petition, admits that the Alaska Steamship Company (hereinafter called "Respondent Company") is a Washington corporation engaged in business in the State of Washington and within this judicial circuit; that Respondent Union is a labor organization engaged in promoting and protecting the interests of its members in the State of Washington, elsewhere in the United States, and all over the world, and within this judicial circuit; that this Court has jurisdiction of the petition for enforcement herein by virtue of Section 10(e) of the National Labor Relations Act, as amended, (hereinafter called the "Act"); and denies each and every other allegation contained in said paragraph numbered (1), and particularly denies that unfair labor practices occurred as alleged.

II.

Answering paragraph numbered (2) of the petition, admits that proceedings were had before the Petitioner (hereinafter called the "Board") in the matter referred to in the petition, that on February 11, 1952, the Board stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent Company, its officers, agents, successors and assigns, and to Respondent Union, its officers, representatives, agents, successors, and assigns, and that the Board's Order was served upon respondents as alleged; but only with respect to Horace W. Underwood, the Charging Party, denies that due proceedings were had, that the Board duly stated the findings of fact and conclusions of law, or any of them, that the Board duly issued the Order, that the findings of fact and conclusions of law, or any of them, or the issuance of the Order were upon due proceedings had as alleged in said paragraph numbered (2).

III.

Answering paragraph numbered (3) of the petition, denies that it has knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and therefore denies the same.

IV.

Further Answering said petition, the Respondent Union alleges:

(1) The Board in its Decision and Order now sought to be enforced, overlooked its prior Decision

and Order in Case No. 20-CA-166, officially reported in 89 NLRB 894, in the proceedings entitled "In the Matter of Pacific Maritime Association, successor in interest to Pacific American Shipowners Association and its member Companies, and, Radio Officers Union, Marine Division, Commercial Telegraphers Union, AFL," issued by the Board on April 28, 1950, and hereafter, for brevity, referred to as the "Board's 1950 Order."

(2) By said Board's 1950 Order, the Board found, among other things, "that the mere execution of the contract" there involved, violated Section 8(a)(1) of the Act. The Board further found in said case a violation of Section 8(a)(1) "based solely upon the contractual provisions granting preference in hiring to members of" the Respondent Union.

(3) The Board in its Decision and Order now sought to be enforced, adopted the findings of the Trial Examiner that the Agreement between the Respondent Company and the Respondent Union (General Counsel's Exhibit 4 herein), which was entered into subsequent to the Board's 1950 Order, and the then concurrently adopted Respondent Union's "National Assignment Rules" (Respondent Union's Exhibit 1 herein), were lawfully administered without discrimination to members and non-members of the Respondent Union alike.

(4) The Board, in its Decision and Order now sought to be enforced, furthermore adopted the findings of its Trial Examiner that "Upon the evi-

dence, there being no showing that under the existing shipping rules a place on a national assignment list has been denied to a non-member under circumstances where it would not have been denied to a member, I find that there has been a failure of proof that the Union's shipping rules have been misapplied so as to result in discrimination against radio officers because of non-membership. Accordingly, the proof does not establish that the 1950 agreement has been unlawfully administered, and I shall recommend that the complaint be dismissed in all respects other than the allegations concerning Underwood, * * *"

(5) In said Board's 1950 Order, the Board, in referring to the contract between the Respondent Union and the Respondent Company, which was there under review, stated in footnote #9 thereof, as follows:

"Nothing in our order herein shall be deemed to require the Respondents to vary or abandon any substantive provision of such agreement, or to prejudice the assertion by employees of any rights they may have acquired thereunder."

The Board has therefore overlooked its prior Order and more particularly its specific directive commanding the Respondent Union not "to vary or abandon any substantive provision of such agreement or to prejudice the assertion by employees of any rights they may have acquired thereunder."

(6) Without prejudice to its position heretofore

or hereinafter asserted herein, the Respondent Union alleges that the Board erred in directing the Respondent Union to make whole any losses which complainant Underwood may have sustained and in adopting the findings of the Examiner that complainant Underwood was or would have been entitled to referral by Respondent Union to the SS Alaska ahead of Lewis A. Deyo on May 5, 1950. To have made such a referral of complainant Underwood to the SS Alaska, ahead of Lewis A. Deyo, would have given said complainant Underwood a position of advantage and preference over other employees of Respondent Company and of other employers, as to any rights which said employees may have acquired under the contract referred to in the Board's 1950 Order and under the present contract (General Counsel's Exhibit 4), and Respondent Union's National Assignment Rules thereunder (Respondent Union's Exhibit 1), all of which have been found valid and subsisting by the Board in the instant Order which it now seeks to enforce.

V.

Further Answering said petition, the Respondent Union alleges:

(1) As used herein in this Answer the word "find" means find and conclude, the word "found" means found and concluded, the word "finding" means finding and conclusion, the word "Examiner" means the Trial Examiner, the words "related findings" mean subsidiary and related findings of the Examiner or the Board upon which in whole or in

part the findings referred to are based, and the word "complainant" means the person in whose favor the Board entered a back pay order; where it is alleged in this Answer that a finding or findings are not supported by the evidence is meant in addition that the same are not supported by substantial evidence on the record considered as a whole and also that a contrary finding or findings would be supported by substantial evidence on the record considered as a whole and the preponderance of the evidence; where references are made to section numbers the same refer to sections of the Act.

(2) The Board in its Decision found that the complainant's name was removed from the national assignment list of the Respondent Union and therefore found that it constituted discrimination in violation of Sections 8(a)(1) and (3) by the Respondent Company and Sections 8(b)(1)(A) and (2) by the Respondent Union. Said findings, including related findings, are not supported by the evidence and are contrary to law. Moreover, the Board erred in failing to find that radio officers assigned to vessels after the execution of the 1950 agreement between the Respondent Union and the Association of which the Respondent Company is a member, or other radio officers assigned to positions aboard vessels of the Company were not required to be members of the Union as a condition of employment aboard such vessels.

(3) The Board in its Decision adopted the find-

ings of the Examiner, to wit, that the Respondent Company discriminated against complainant on May 5, 1950, in violation of Sections 8(a)(3) and (1), and that, by causing the Respondent Company to do so, the Respondent Union violated Sections 8(b)(2) and (1)(A). Said findings, including related findings, are not supported by the evidence and are contrary to law. Moreover, the Board erred in failing to find that complainant limited his availability to employment in the shipping industry based upon job availability and seniority only with and confined to the Alaska Steamship Company, and that to have recognized such limited availability the Respondent Union would thereby have discriminated against all Union and non-Union job applicants who had an equal or prior right to that of complainant, to an assignment for work.

(4) The Board in its Decision adopted the findings of the Examiner, to wit, that the failure to make available to the complainant an assignment as Second Radio Officer on the SS Alaska on May 5, 1950, filled by Lewis A. Deyo, was discriminatory within the meaning of the Act. Said findings, and related findings, are not supported by the evidence and are contrary to law.

(5) The Board, in its Decision adopted the findings of the Examiner, to wit, that on May 5, 1950, complainant was unlawfully denied employment. Said findings, and related findings, are not supported by the evidence and are contrary to law.

(6) The Board in its Decision adopted the findings of the Examiner, to wit, that the Respondent Union did not restore complainant's name to the national assignment lists of Respondent Union following December 29, 1949. Said findings, and related findings, are not supported by the evidence and are contrary to law. Moreover, the Board erred in failing to find that complainant's name was removed from the Respondent Union's lists at complainant's request because he preferred to seek employment through channels other than through the Respondent Union.

(7) The Board in its Decision adopted the findings of the Examiner, to wit, that complainant was or would have been entitled to referral by Respondent Union to the SS Alaska ahead of Lewis A. Deyo on May 5, 1950, under the principles of rotary hiring. Said findings, and related findings, are not supported by the evidence and are contrary to law.

(8) The Board in its Decision adopted the findings of the Examiner, to wit, that Lewis A. Deyo's number on the Respondent Union's national assignment list of January 7, 1950, was #815, rather than #793. Said findings, and related findings, are not supported by the evidence and are contrary to law. Moreover, the Board erred in failing to find that complainant's name being numbered 828 on the Respondent Union's assignment list of December 31, 1949, and numbered 793 on the list of January 7, 1950, were related numbers of standing on said lists, wholly unconnected with complainant's

membership or non-membership in the Respondent Union.

(9) The Board in its Decision adopted the findings of the Examiner, to wit, that preference in employment was accorded to members of Respondent Union and resulted in an unlawful denial of employment to complainant on May 5, 1950. Said findings, and related findings, are not supported by the evidence and are contrary to law.

(10) The Board in its Decision adopted the findings of the Examiner, to wit, that the Respondent Company had knowledge of complainant's union or non-union affiliation at times material to this case. Said findings, and related findings, are not supported by the evidence and are contrary to law. Moreover, the Board erred in failing to find that Respondent Union gave no consideration to complainant's status as a union member in connection with job referrals.

(11) The Board in its Decision adopted the findings of the Examiner, to wit, that complainant would have chosen to stand by the SS Alaska following October 14, 1950. Said findings, and related findings, are not supported by the evidence and are contrary to law.

(12) The Board erred in failing to find that the Respondent Union offered, and complainant accepted an assignment to a permanent position aboard the SS Pacificus immediately after complainant removed the limitations and restrictions

as to the kind of job he would accept, which evidenced the absence of any discrimination imposed upon complainant by the Respondent Union.

VI.

Further Answering said petition, the Respondent Union alleges that the remedy ordered by the Board, and each portion thereof, is not supported by findings which have any support by the evidence, and is not supported by the findings, will not effectuate the purposes of the Act, is in excess of the powers conferred upon the Board, and is not sustainable in law; and in the following particulars, among others, the remedy ordered by the Board is not sustainable for one or more of the reasons stated above:

(1) In ordering that the Respondent Company offer any employment whatsoever to complainant as provided, and to the requirement that both Respondents cease and desist from engaging in unfair labor practices and take certain affirmative action designed to effectuate the policies of the Act.

(2) In ordering that the Respondent Company and the Respondent Union jointly and severally, or in any manner, make whole in any manner the complainant for any alleged loss of pay whatsoever as provided.

(3) In ordering that the Respondents shall make whole in any manner the complainant for any alleged loss of pay whatsoever.

(4) In ordering Respondent Union to perform

all those certain affirmative acts, not heretofore specifically mentioned and referred to above.

(5) In ordering that the Respondent Company and the Respondent Union cease and desist from engaging in certain acts or alleged unlawful labor practices, as provided, or from interfering with, restraining or coercing employees in the exercise of rights guaranteed by Section 7, as provided.

VII.

Further Answering said petition, the Respondent Union alleges that the Order of the Board, and each portion thereof except that portion whereby certain allegations of the complaint are dismissed, is not supported by findings supported by the evidence; is not supported by the findings, will not effectuate the purposes of the Act, is in excess of the powers conferred upon the Board, and is not sustainable in law.

VIII.

Further Answering said petition, the Respondent Union alleges:

(1) The Board erred in failing and refusing to order the complaint dismissed in its entirety.

(2) The Board erred in failing and refusing to sustain each and all of the exceptions filed by Respondent Union to the Intermediate Report and Recommended Order of the Examiner.

(3) Without prejudice to its position heretofore or hereinafter asserted herein, the Respondent

Union alleges that the Board erred in failing and refusing to find and affirmatively order that complainant should not be offered employment or awarded back pay because his unwillingness to accept employment opportunities amounted to a wilful incurrence of wage losses.

(4) Without prejudice to its position heretofore or hereinafter asserted herein, the Respondent Union alleges that the Board erred in failing and refusing to find and affirmatively order that any award of back pay in favor of complainant should terminate not later than October 14, 1950.

(5) Without prejudice to its position heretofore or hereinafter asserted herein, the Respondent Union alleges that the Board erred in failing to find that the Respondent Company was responsible for the discrimination, if any, suffered by complainant, and that the Board erred in failing to order that the Respondent Company only should be required to make whole the complainant for loss of pay, if any, sustained by the complainant as a result of such discrimination, if any.

(6) Without prejudice to its position heretofore or hereinafter asserted herein, the Respondent Union alleges that the Board erred in ordering that loss of wages, if any, suffered by complainant be computed on a quarterly basis.

Wherefore, having fully answered, the Respondent Union prays that this Honorable Court enter a

decree denying the petition and refusing to enforce the Order of the Board, and that the Order be set aside in its entirety, or alternatively, that the Order be modified in the respects the same may be found to be improper, and that the Respondent Union receive such other and further relief as to this Honorable Court may seem just.

/s/ JAY A. DARWIN,

Attorney for Respondent, American Radio Association, CIO.

Duly verified.

[Endorsed]: Filed December 1, 1952.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH RESPONDENT, AMERICAN RADIO ASSOCIATION, CIO, INTENDS TO RELY

In this proceeding, respondent, American Radio Association, CIO, will urge and rely upon the following points:

1. The Board's finding that the Respondent Company violated Section 8(a)(1) and (3) of the Act, as amended, by discriminating against Horace W. Underwood, and that the Respondent Union violated Section 8(b)(2) and (1)(A) by causing the Company to do so, was invalid and improper.

2. The Board's order, only as to Horace W. Underwood, is in all respects invalid and improper.

Dated at San Francisco, California, this 28th day of November, 1952.

/s/ JAY A. DARWIN,
Attorney for Respondent, American Radio Association, CIO.

[Endorsed]: Filed December 1, 1952.

[Title of Court of Appeals and Cause.]

STIPULATION

It Is Hereby Stipulated and agreed among the parties to the within appeal that none of the Exhibits which have been introduced by any of the parties need be printed for the Court, and that the Court may use and consider the original Exhibits now on file in the above-entitled case.

Dated: December 17, 1952.

NATIONAL LABOR
RELATIONS BOARD,

By /s/ A. NORMAN SOMERS,
Assistant General Counsel.

BOGLE, BOGLE & GATES,

By /s/ J. TYLER HULL,
Attorneys for Alaska
Steamship Co.

BASSETT & GEISNESS,

By /s/ JOHN GEISNESS,

Attorneys for Horace W.
Underwood.

/s/ JAY A. DARWIN,

Attorney for American Radio
Association, CIO.

So Ordered:

/s/ WILLIAM DENMAN,

/s/ WM. HEALY,

/s/ WALTER L. POPE,

Circuit Judges.

[Endorsed]: Filed January 13, 1953.